



# THE LAW REPORTS

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INCORPORATED COUNCIL OF LAW REPORTING FOR ENGLAND AND WALES.

## THE COMPLETE CURRENT DIGEST 1913.

CASES REPORTED IN THE  
"LAW REPORTS," "WEEKLY NOTES"  
AND ALL OTHER CONTEMPORANEOUS  
REPORTS,

TOGETHER WITH A NOTE OF THE MORE IMPORTANT  
STATUTES, RULES, ORDERS, AND PARLIAMENTARY PAPERS  
AFFECTING THE PROFESSION  
PASSED OR ISSUED DURING THE YEAR.

COMPILED BY  
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EACH PART INCORPORATES AND SUPERSEDES THE PREVIOUS PARTS OF  
THE SAME YEAR.

### FEBRUARY 2, 1914.

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# THE COMPLETE CURRENT DIGEST, 1913.

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List of Abbreviations.—In this Digest the following abbreviations are used.

A. C. . . . .	House of Lords and Privy Council Appeal cases.	L. J. . . . .	Lord Justice.
Appx. . . . .	Appendix.	L. T. . . . .	Law Times Reports.
Apr. . . . .	April.	Loc. Govt. . . .	Local Government.
Art. . . . .	Article (or Articles).	Lond. Gaz. . . .	The London Gazette.
Asp. Mar. Law Cas. . . . .	Aspinall's Maritime Law Cases (New Series).	Mans. . . . .	Manson Bankruptcy and Company Cases.
Att.-Gen. . . . .	Attorney-General.	Mar. . . . .	March.
Aug. . . . .	August.	Merch. Shipp. . .	Merchant Shipping.
Bd. . . . .	Board.	Metrop. . . . .	Metropolis (or Metropolitan).
B. W. C. C. . . . .	Butterworth's Workmen's Compensation Cases.	Nov. . . . .	November.
B. C. . . . .	Borough Council.	O. . . . .	Order.
c. . . . .	chapter.	O. in C. . . . .	Order in Council.
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C. C. A. . . . .	Court of Criminal Appeal.	p. . . . .	page.
C. C. C. . . . .	Central Criminal Court.	P. C. . . . .	The Judicial Committee of the Privy Council.
C. C. R. . . . .	Crown Cases Reserved.	Plt. . . . .	Plaintiff.
Ch. . . . .	Chancery.	pp. . . . .	pages.
C. i. f. . . . .	Cost, freight and insurance.	pt. . . . .	part.
Co. . . . .	Company.	P. . . . .	President or Probate.
col. . . . .	column.	Parl. . . . .	Parliament (or Parliamentary).
Com. Cas. . . . .	Reports of Commercial Cases.	Publ. . . . .	Publication.
Commrs. . . . .	Commissioners.	Q. B. . . . .	Queen's Bench.
Cox, C. C. . . . .	Cox's Criminal Cases.	R. . . . .	Rule (or Rules).
Cr. App. R. . . . .	Criminal Appeal Cases.	R. D. C. . . . .	Rural District Council.
Ct. Just. . . . .	Court of Justiciary.	R. P. C. . . . .	Reports of Patent, Design and Trade Mark Cases.
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Def. . . . .	Defendant.	Rex . . . . .	The King.
Dept. . . . .	Department.	ry. . . . .	railway.
Div. Ct. . . . .	Divisional Court.	Sc. . . . .	Scotland.
E. . . . .	England.	S. C. . . . .	Session Cases (Scotland).
Eccles. . . . .	Ecclesiastical.	s. . . . .	section.
edit. . . . .	edition.	ss. . . . .	sections.
Educ. . . . .	Education.	Sched. . . . .	Schedule.
F. . . . .	Form (or Forms).	Sec. . . . .	Secretary.
Feb. . . . .	February.	Sept. . . . .	September.
F. o. b. . . . .	Free on board.	S. J. . . . .	Solicitors' Journal.
H. L. . . . .	House of Lords.	St. O. P. . . . .	Stationery Office Publication.
H. M. . . . .	His Majesty the King.	St. R. & O. . . .	Statutory Rules and Orders.
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1 I. R. 1.  
Disapproved. *In re HICKEY, HICKEY v. HICKEY* - C. A. (Ir.) [1913] 1 I. R. 21
- Besant v. Wood* - (1879) 12 Ch. D. 605  
Referred to. *MACMAHON v. MACMAHON*  
C. A. (Ir.) [1913] 1 I. R. 428
- Beverly, In re* - [1901] 1 Ch. 681, 688  
Distinguished. *In re COOKE'S SETTLEMENT. TARRY v. COOKE*  
[1913] 2 Ch. 661
- Bideford Parish, In re* - [1900] P. 314  
Approved. *SUTTON v. BOWDEN*  
[1913] 1 Ch. 518
- Birkbeck Permanent Building Society, In re*,  
[1912] 2 Ch. 183.  
Referred to. *BROUGHAM v. DWYER*  
Div. Ct. 29 T. L. R. 234
- Biscoe v. Jackson* - (1887) 35 Ch. D. 460  
Discussed and distinguished. *In re WILSON. TWENTYMAN v. SIMPSON*  
[1913] 1 Ch. 314
- Bisgood v. Henderson's Transvaal Estates, Ltd.*,  
[1908] 1 Ch. 743.  
Applied. *ETHERIDGE v. CENTRAL URUGUAY NORTHERN EXTENSION RY. Co., LD.* - [1913] 1 Ch. 425
- Blackburn Building Society v. Cunliffe Brooks & Co.*, (1882) 22 Ch. D. 61.  
Applied. *REVERSION FUND AND INSURANCE Co. v. MAISON COSWAY*  
[1913] 1 K. B. 364
- Blackburn Corporation v. Sanderson*, [1902]  
1 K. B. 794.  
Followed. *MAYOR OF BOLTON v. SCOTT*  
C. A. 11 L. G. R. 352  
*METROPOLITAN WATER BOARD v. BUNN* - C. A. [1913] 3 K. B. 181
- Blackpool and Fleetwood Tramroad Co. v. Thornton Urban Council*, [1909] A. C. 264.  
Distinguished. *TOTTENHAM U. D. C. v. METROPOLITAN ELECTRIC TRAMWAYS, LD.* H. L. (E.) [1913] A. C. 702
- Blair Open Hearth Furnace Co., Ltd., In re*  
[1913] W. N. 209.  
Affirmed - C. A. [1913] W. N. 346
- Blow, In re. St. Bartholomew's Hospital (Governors) v. Cambden*, [1913] 1 Ch. 358.  
Reversed - C. A. [1913] W. N. 337
- Bluett v. Stutchburys, Ltd.*, (1908) 24 T. L. R. 469  
Distinguished. *NELSON v. JAMES NELSON & SONS, LD.* - [1913] 2 K. B. 471
- Board v. Board* - (1873) L. R. 9 Q. B. 48  
Distinguished. *In re TENNENT'S ESTATE* - [1913] 1 I. R. 280
- Bos v. Helsham* - (1886) L. R. 2 Ex. 72  
Distinguished. *EASTWOOD v. ASHTON*  
[1913] 2 Ch. 39
- Bouch v. Sproule* - (1887) 12 App. Cas. 385  
The principle of, applied. *In re EVANS. JONES v. EVANS* - [1913] 1 Ch. 23
- Bourke v. Cork and Macroom Ry. Co.*, (1879)  
4 L. R. Ir. 682.  
Dicta of Dowse B. in, overruled. *TAFF VALE RY. Co. v. JENKINS*  
[1913] A. C. 1
- Boxall v. Boxall* - [1884] 27 Ch. D. 220  
Applied. *HEWSON v. SHELLEY*  
[1913] 2 Ch. 384
- Bradford v. Mayor of Eastbourne*, [1896] 2  
Q. B. 205.  
Referred to. *KERSHAW v. SMITH (ALFRED JOHN) & Co.*  
Div. Ct. [1913] 2 K. B. 455
- Bradley v. Carritt* - [1903] A. C. 253  
Discussed and distinguished. *KREG-LINGER (G. & C.) v. NEW PATAGONIA MEAT AND COLD STORAGE Co.*  
H. L. E. [1913] W. N. 336
- Brailey v. Rhodesia Consolidated, Ltd.*, [1910] 2  
Ch. 95.  
Referred to. *In re DEMERARA RUBBER Co.* - [1913] W. N. 56
- Bridgewater Navigation, Co., In re*, [1891] 1 Ch.  
155.  
Distinguished. *In re NATIONAL TELEPHONE Co., LD.* - 109 L. T. 389
- Brinsmead (John) & Son, Ltd. v. Brinsmead (E. G. S.) and Waddington & Sons, Ltd.*, (1913) 30 R. P. C. 137.  
Affirmed - C. A. 29 T. L. R. 237
- Bristol (Marquis of), In re* - [1897] 1 Ch. 946  
Observations on. *In re FRASER. IND v. FRASER* - [1913] 2 Ch. 224  
Followed. *In re MARKE WOOD; WODEHOUSE v. WOOD* - [1913] 1 Ch. 303
- Bristol Corporation v. John Aird & Co.*, 28  
T. L. R. 278.  
Affirmed - H. L. (E.) [1913] A. C. 241
- British Glanzstoff Manufacturing Co., Ltd. v. General Accident, Fire and Life Assurance Corporation, Ltd.*, 1912 S. C. 591.  
Affirmed - [1913] A. C. 143
- Brooking-Phillips v. Brooking-Phillips* (sub  
nom. *P. v. P.*), 107 L. T. 721.  
Affirmed - C. A. [1913] W. N. 54



- Brooks, In re* - - - (1897) 76 L. T. 771  
Followed. *In re COOKE'S SETTLEMENT TARRY v. COOKE*  
[1913] 2 Ch. 661
- Brown, In re* - - - (1890) 63 L. T. 159  
Followed. *In re PEARCE. ALLIANCE ASSURANCE Co. v. FRANCIS*  
[1913] 2 Ch. 674
- Brown v. Mitchell*, 1910 S. C. 369; 47 Sc. L. R. 216.  
Observations of Lord Dunedin in, approved. *In re BONNETT and FOWLER*  
[1913] 2 K. B. 537
- Browne v. Hammond* - (1858) John. 210  
The principle of, applied. *In re SEATON. ELLIS v. SEATON*  
[1913] 2 Ch. 614
- Bruner v. Moore* - [1904] 1 Ch. 305, 312  
Applied. *MORRELL v. STUDD & MILLINGTON* - [1913] 2 Ch. 648
- Brunton v. Stamp Duties (New South Wales) Commrs.*, 82 N. S. W. R. 562.  
Reversed - P. C. 108 L. T. 922
- Buckley v. Hull Docks Co.* - [1893] 2 Q. B. 93  
Followed. *FORBES v. SAMUEL*  
[1913] W. N. 163
- Bulkeley v. Stephens* - [1896] 2 Ch. 241  
Distinguished. *In re SALE. NISBET v. PHILP* - - - [1913] 2 Ch. 697
- Bullock v. London General Omnibus Co.*, [1907] 1 K. B. 264.  
Distinguished. *POULTON v. MOORE*  
Div. Ct. [1913] W. N. 349
- Burgess v. Burgess*, (1853) 3 De G. M. & G. 896.  
Distinguished. *TEOFANI & Co., LD. v. TEOFANI* - C. A. 30 R. P. C. 446  
Followed. *BRINSMEAD (JOHN) v. BRINSMEAD (E. G. S.)* - 30 R. P. C. 137
- Burra v. Ricardo* - (1885) 1 Cab. & E. 478  
Questioned. *LLOYD'S BANK v. SWISS BANKVEREIN. UNION OF LONDON AND SMITHS BANK v. SAME*  
C. A. 18 Com. Cas. 79
- Butler v. Wildman* - (1820) 3 B. & Ald. 398  
Distinguished. *KACIANOFF v. CHINA TRADERS INSURANCE Co.*  
[1913] 3 K. B. 407
- Cababé v. Walton-upon-Thames District Council*, [1912] 2 K. B. 432; [1913] 1 K. B. 481.  
Affirmed - H. L. (E.) [1913] W. N. 369
- Cadman v. Cadman* - (1886) 33 Ch. D. 397  
Followed. *In re BADGER. BADGER v. BADGER* - - - [1913] 1 Ch. 385
- Calico Printers' Association, Ld. v. Higham*, [1911] 1 K. B. 93, 104.  
Dictum of Farwell L.J. in, doubted. *CALICO PRINTERS' ASSOCIATION v. BOOTH* - - - [1913] 3 K. B. 652
- Californian Fig Syrup Co., In re*, [1910] 1 Ch. 130  
Referred to. *TEOFANI & Co., LD. v. TEOFANI* - C. A. 30 R. P. C. 446
- Calver v. Lawton* - (1885) 31 Ch. D. 440  
Not followed. *OLPHERTS v. CORYTON*  
[1913] 1 I. R. 218
- Campbell, Ex parte* - (1880) 16 Ch. D. 198  
Followed. *OLPHERTS v. CORYTON*  
[1913] 1 I. R. 381
- Campbell, In the Goods of*, (1829) 2 Hagg. Eccl. 555.  
Referred to. *HEWSON v. SHELLEY*  
[1913] W. N. 246
- Campbell v. Paddington Parishioners*, (1852) 2 Rob. Eccl. 558.  
Not followed. *SUTTON v. BOWDEN*  
[1913] 1 Ch. 518
- Candian Land Reclaiming and Colonizing Co., In re*, (1880) 4 Ch. D. 660.  
Followed. *In re COMPANIES (CONSOLIDATION) ACT, 1908, AND THE IRISH PROVIDENT ASSURANCE Co., LD., AND JOHANNA BRADLEY* - C. A. (Ir.)  
[1913] 1 I. R. 352
- Cane, In re* - - - (1890) 60 L. J. (Ch.) 36  
The principle of, applied. *In re SEATON. ELLIS v. SEATON*  
[1913] 2 Ch. 614
- Carlisle Café Co. v. Muse Brothers & Co.*, (1897) 67 L. J. (Ch.) 53.  
Followed. *GOLDFOOT v. WELCH*  
[1913] W. N. 357
- Carlisle and Silloth Golf Club v. Smith*, [1912] 2 K. B. 177.  
Affirmed - C. A. [1913] 3 K. B. 75
- Carter v. John Lang & Sons*, (1908) 1 B. W. C. C. 379.  
Followed. *BARNETT v. PORT OF LONDON AUTHORITY* - - - C. A.  
[1913] W. N. 35
- Cartwright v. Cartwright*, (1853) 3 De G. M. & G. 982.  
Referred to. *MACMAHON v. MACMAHON* - C. A. (Ir.) [1913] I. R. 428
- Casey v. Hellyer* - (1886) 17 Q. B. D. 97  
Distinguished. *HOPKINS v. COLLIER*  
[1913] W. N. 94
- Cathcart's Trustee v. Allardice* - (1899) 2 F. 326  
Disapproved. *MACKENZIE v. JOHNSTONE* - H. L. (Sc.) 107 L. T. 473
- Caton v. Summerlee and Mossend Iron and Coal Co., Ld.*, (1902) 4 F. 989.  
Followed. *GRAHAM (MARY) v. BARR AND THORNTON* - - - Ct. Sess.  
1912 S. C. 538
- Cattell, In re* - - - [1907] 1 Ch. 567  
Affirmed - C. A. [1913] W. N. 306
- Cavalier v. Pope* - - - [1906] A. G. 428  
Applied. *DOBSON v. HORSLEY*  
30 T. L. R. 148
- MIDDLETON v. HALL* - 108 L. T. 804
- RYALL v. KIDWELL*  
Div. Ct. [1913] 3 K. B. 123
- Cave v. Coleman* - (1828) 3 Man. & Ry. 2  
Dicta of Bayley J. in, disapproved. *HEILBUT, SYMONS & Co. v. BUCKLETON*  
H. L. (E.) [1913] A. C. 30

- Cave v. Horsell* - - - [1912] 2 K. B. 533  
Distinguished. *DERBY MOTOR CAB Co. v. CROMPTON AND EVANS UNION BANK* - - - 29 T. L. R. 673
- Clarendish, In re* - - - [1912] 1 Ch. 794  
Followed. *In re MARKE WOOD WODEHOUSE v. WOOD* - [1913] 1 Ch. 303
- Distinguished. *In re FRASER. IND v. FRASER* - - - [1913] 2 Ch. 224
- Clarendish-Bentinck v. Fenn*, (1887) 12 App. Cas. 652.  
Applied. *In re COMPANIES (CONSOLIDATION) ACT, 1908, AND THE IRISH PROVIDENT ASSURANCE CO., LD., AND JOHANNA BRADLEY*  
C. A. (Ir.) [1913] 1 I. R. 352
- Central London Ry. Co. v. City of London Land Tax Commrs.*, [1911] 2 Ch. 467.  
Affirmed, *sub nom. CITY OF LONDON LAND TAX COMMRS. v. CENTRAL LONDON RY. CO.*  
H. L. (E.) [1913] A. C. 364
- Clutchman v. Wright* - - - (1604) Noy, 118  
Followed. *FORBES v. SAMUEL*  
[1913] 3 K. B. 706
- Chamberlain v. Mayor of Bradford* (1903) 20 R. P. C. 634.  
Followed. *JOSEPH CROSFIELD & SONS, LD. v. TECHNO-CHEMICAL LABORATORIES, LD.* - 30 R. P. C. 297
- Chance v. Beveridge and the Freeman's Journal, Ltd.*, (1895) 11 T. L. R. 528.  
Followed. *COONEY v. WILSON AND HENDERSON* - C. A. (Ir.) [1913] 2 I. R. 402
- Charrington & Co., Ltd. v. Wooder*, 29 T. L. R. 145.  
Reversed - H. L. (I.) [1913] W. N. 369
- Cheslyn v. Cresswell* - (1763) 3 Bro. P. C. 246  
Distinguished. *In re WHITING. ORMOND v. DE LAUNAY*  
[1913] 2 Ch. 1
- Chisholm v. Douulton* - (1889) 22 Q. B. D. 736  
Distinguished. *ARMITAGE, LD. v. NICHOLSON* - Div. Ct. 10 L. G. R. 547
- Churchill, In re* - - - [1909] 2 Ch. 431  
Distinguished. *In re WEST. WEST-HEAD v. ASPLAND* - [1913] 2 Ch. 345
- Churchward v. Churchward and Holliday*, [1895] P. 7.  
Distinguished. *SCOTT v. SCOTT*  
[1913] P. 52
- Cleaver v. Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147.  
Applied. *HALL v. KNIGHT AND BAXTER* - C. A. [1913] W. N. 283
- Clegg v. Rowland* - (1866) L. R. 2 Eq. 160  
Dictum of Kindersley V.-C. at p. 165, followed. *In re HARTER*  
[1913] W. N. 104
- Clerk v. Day* - - - (1859) Cro. Eliz. 313  
Considered. *In re DAVISON'S SETTLEMENT. CATTERMOLLE DAVISON v. MUNBY* - - - [1913] 2 Ch. 49
- Clover, Clayton & Co. v. Hughes*, [1910] A. C. 242.  
Distinguished. *HASTIE (OR RITCHIE) v. KERR* - - - Ct. Sess. [1913] W. C. & Ins. Rep. 297
- Colchester Corporation v. Gepp; King, Third Party*, (1912) 10 L. G. R. 930.  
An appeal was brought against this decision, but was compromised on terms.  
C. A. 11 L. G. R. 349
- Coldwell v. Holme* - (1854) 2 Sm. & G. 31  
Followed. *In re MAGRATH. HISTED v. QUEEN'S UNIVERSITY*  
[1913] 2 Ch. 331
- Colls v. Home and Colonial Stores*, [1904] A. C. 179, 210, 211.  
Observations of Lord Lindley in, considered. *DAVIS v. MARRABLE*  
[1913] 2 Ch. 421
- Collyer v. Isaacs* - (1881) 18 Ch. D. 342, 351  
Principles stated in, applied. *PULLAN v. KOF* - - - [1913] 1 Ch. 9
- Comiskey v. Bowring-Hanbury* - [1905] A. C. 84  
See *In re HANBURY'S SETTLED ESTATES*  
[1913] 2 Ch. 357
- Consolidated London Properties v. St. Marylebone Assessment Committee*, (1912) 10 L. G. R. 1058.  
Affirmed - C. A. [1913] W. N. 169
- Cook v. The Steamship "Montreal,"* (1913) 29 T. L. R. 233.  
Applied. *WEBBER v. WANSBOROUGH PAPER CO., LD.*  
C. A. [1913] W. N. 236
- Cooke v. Midland Great Western Ry. of Ireland*, [1909] A. C. 229.  
Considered and distinguished. *LATHAM v. R. JOHNSON & NEPHEW, LD.*  
[1913] 1 K. B. 398
- Cooper v. Kendall* - - [1909] 1 K. B. 405  
Referred to. *BROWN v. MACKENZIE*  
[1913] W. N. 75
- Cooper v. Macdonald* - (1873) L. R. 16 Eq. 258.  
Distinguished. *In re BEAUMONT. BRADSHAW v. PACKER*  
[1913] 1 Ch. 325
- Corke v. Rainger and Higgs* - [1912] P. 69  
Approved. *SUTTON v. BOWDEN*  
[1913] 1 Ch. 518
- Cotton, In re, Ex parte Cooke*, (1912) 57 S. J. 174.  
Reversed - - - C. A. 108 L. T. 310
- Cowes U. D. C. v. Southampton, &c., Steam Packet Co.*, [1905] 2 K. B. 287.  
Referred to. *GENERAL ESTATES CO. v. BEAVER* - [1913] 2 K. B. 433
- Cow v. Burbidge* - (1863) 13 C. B. (N.S.) 430  
Followed. *BRADLEY v. WALLACES, LD.* - - - C. A. [1913] 3 K. B. 629  
*WHITE v. STEADMAN*  
[1913] W. N. 172

- Crabbe & Robertson v. Stubbs, Ltd.*, (1895) 22 R. 860.  
Discussed and explained. STUBBS, LD.  
v. RUSSELL  
H. L. (Sc.) [1913] A. C. 386
- Craske v. Wigan* - [1909] 2 K. B. 635  
Explained. MITCHINSON v. DAY  
v. BROTHERS - [1913] 1 K. B. 603
- Crafter v. Thomas* - [1909] 2 Ch. 348  
Distinguished. HEWSON v. SHELLEY  
[1913] 2 Ch. 384
- Cremins v. Guest, Keen & Nettlefolds, Ltd.*,  
[1908] 1 K. B. 469.  
Distinguished. EDWARDS v. WINGHAM  
AGRICULTURAL IMPLEMENT CO., LD.  
C. A. [1913] 3 K. B. 596  
Followed. MOLE v. WADSWORTH  
C. A. [1913] W. C. & Ins. Rep. 160
- Crosswell v. Jeffreys* - (1912) 28 T. L. R. 413  
Reversed - C. A. 29 T. L. R. 90
- Crosfield (Joseph) & Sons, Ltd., In re*, [1910]  
1 Ch. 130.  
Followed. *In re* TEOFANI & CO.'S  
TRADE MARK C. A. [1913] W. N. 188
- Crowther v. Appleby* - (1873) L. R. 9 C. P. 23  
Distinguished. FORBES v. SAMUEL  
[1913] 3 K. B. 706
- Croyden, In re* - (1911) 55 S. J. 632  
Distinguished. *In re* BLOW, GOVERNORS  
OF ST. BARTHOLOMEW'S HOSPITAL v. CAMBLEN - [1913] 1 Ch. 358
- Cubison v. Mayo* - [1896] 1 Q. B. 246  
Explained. BELL v. GIRDLESTONE  
Div. Ct. [1913] 2 K. B. 225
- Cummings v. Darnagaril Coal Co., Ltd.*, (1903)  
6 F. 513.  
Distinguished. MACKENZIE v. FAIRFIELD  
SHIPBUILDING AND ENGINEERING CO., LD. - Ct. Sess. 1912 S. C. 213
- Cunningham v. Belfast Corporation*, [1913] 2  
I. R. 450.  
Followed and approved. REX v.  
RECORDER OF BELFAST  
Div. Ct. Ir. [1913] 2 I. R. 439
- D. v. D.* - [1903] P. 144  
Considered. SCOTT v. SCOTT  
[1913] A. C. 417
- Daff v. Midland Colliery Owners' Mutual Indemnity Co.*, [1913] W. C. & Ins. Rep. 1.  
Affirmed - H. L. (E.) [1913] W. N. 256
- Dalton v. Fitzgerald* - [1897] 2 Ch. 86  
Distinguished. *In re* TENNENT'S  
ESTATE - [1913] 1 I. R. 280
- D'Angibau, In re* - (1880) 15 Ch. D. 228, 242  
Principles stated in, applied. PULLAN  
v. KOE - [1913] 1 Ch. 9
- Daniels, In re, Weekes v. Daniels*, [1912] 2 Ch.  
90.  
Followed. *In re* HARTER - [1913]  
W. N. 104
- Davey v. London and South Western Ry.*, (1885)  
12 Q. B. D. 70.  
Discussed. CUTSFORTH v. JOHNSON  
C. A. [1913] W. C. & Ins. Rep. 28
- Davie v. Bush* - (1831) You. 341  
Observations on. *In re* WHITEHEAD.  
WHITEHEAD v. STREET - [1913]  
2 Ch. 56
- Davies v. Glamorgan Coal Co.*, [1913] 5 F. 222.  
Affirmed - C. A. [1913] W. N. 335  
Discussed. RANDLE v. CLAY CROSS  
CO., LD. - [1913] 3 K. B. 795
- Davies and Kent's Contract, In re*, [1910] 2 Ch.  
35, 50.  
Followed. *In re* JOHNSON'S SETTLED  
ESTATES - [1913] W. N. 222
- De Bernadino (or Bertodano) v. Hearn*, 108  
L. T. 452; [1913] W. N. 81.  
Affirmed. *In re* HEARN - C. A.  
108 L. T. 737; [1913] W. N. 103
- De la Warr's (Earl) Settled Estate, In re*,  
(1912) 107 L. T. 141.  
Affirmed - C. A. [1913] 2 Ch. 142
- De Lassalle v. Guildford*, [1901] 2 K. B. 215, at  
p. 221.  
Dicta of A. L. Smith M.R. in,  
disapproved. HEILBUT, SYMONS & CO.  
v. BUCKLETON - H. L. (E.)  
[1913] A. C. 30
- Debendra Nath Dutt v. Administrator-General of Bengal*, (1908) L. R. 35 Ind. Ap. 109.  
Distinguished. HEWSON v. SHELLEY  
[1913] 2 Ch. 384
- Debtors-Holders' Actions, In re*, [1900] W. N.  
58.  
Referred to. WOODS v. WINSKILL  
[1913] W. N. 212
- Defries v. Milne* - (1912) 57 S. J. 27  
Affirmed - C. A. [1913] 1 Ch. 98
- Denaby Case* - (1885) 11 App. Cas. 97  
Considered. CHANCE and HUNT v.  
GREAT WESTERN RY. Ry. & Can. Com.  
29 T. L. R. 483
- Denman (J. L.) & Co., Ltd. v. Westminster Corporation*, [1906] 1 Ch. 464, 478.  
Statement of Buckley J. in, adopted and  
followed. DAVIES v. CITY OF LONDON  
CORPORATION - [1913] 1 Ch. 415
- Deutsche National Bank v. Paul*, [1898] 1 Ch.  
283.  
Followed. HUGHES v. OXENHAM  
C. A. [1913] 1 Ch. 254
- Declin v. Jeffray's Trustees* - (1902) 5 F. 130  
Distinguished. MACKENZIE v. FAIRFIELD  
SHIPBUILDING AND ENGINEERING CO. - Ct. Sess. 1912 S. C. 213
- Dizon, In re* - [1902] 1 Ch. 248  
Overruled. *In re* AVERY. PINSENT v.  
AVERY - C. A. [1913] 1 Ch. 208
- Dizon, In re. Byram v. Tull*, (1889) 42 Ch. D.  
306.  
Followed. *In re* JEFFERY. NUSSEY v.  
JEFFERY - [1913] W. N. 339

- Djambi (Sumatra) Rubber Estates, Ltd., In re*, [1912] W. N. 192.  
Affirmed - C. A. 107 L. T. 631
- Doe v. Beran* - - - (1815) 3 M. & S. 353  
Followed. *In re BIRKBECK PERMANENT BENEFIT BUILDING SOCIETY* [1913] 2 Ch. 34
- Doe v. Permeven* - - - (1840) 11 A. & E. 431  
Applied. *In re FINLAY'S ESTATE* [1913] 1 I. R. 143
- Doe v. Turford* - - - (1832) 3 B. & Ad. 890  
Applied. *In re DJAMBI (SUMATRA) RUBBER ESTATES, LTD.* - 107 L. T. 631
- Doecham Gloves, Ltd., In re* - [1913] 1 Ch. 226  
Overruled. *In re SCHWEPPE'S, LTD.* [1913] W. N. 371
- Dowling v. Dowling* - - - [1898] P. 228  
Doubted but followed. *BOURNE v. BOURNE* - - - [1913] P. 164
- Dowse v. Gorton* - - - [1891] A. C. 190  
Distinguished. *In re OXLEY. JOHN HORNBY & SONS v. OXLEY* [1913] W. N. 356
- Doyle v. Blake* - (1804) 2 Sch. & Lef. 231, 237  
Dicta in, disapproved. *HEWSON v. SHELLEY* - - - [1913] 2 Ch. 384
- Doyle's Estate, In re* - - - [1907] 1 I. R. 204  
Considered. *In re STEELE'S ESTATE C. A. (Ir.)* [1913] 1 I. R. 292
- Dresser v. Norwood* - (1864) 17 C. B. (N.S.) 466  
Distinguished. *TAYLOR v. YORKSHIRE INSURANCE CO.* - - Div. Ct. (Ir.) [1913] 2 I. R. 1
- Du Bochet, In re* - - - [1901] 2 Ch. 441  
Not followed. *In re PEARCE. ALLIANCE ASSURANCE CO. v. FRANCIS* [1913] 2 Ch. 674
- Du Cros (W. & G.), Ltd., In re Applications of*, [1912] 1 Ch. 644.  
Varied sub nom. REGISTRAR OF TRADE MARKS *v. W. & G. DU CROS, LTD.* [1913] A. C. 624
- Dubber v. Trollope* - - - (1734) Amb. 453  
Considered. *In re DAVISON'S SETTLEMENT. CATTERMOLLE DAVISON v. MUNBY* - - - [1913] 2 Ch. 498
- Dublin, Wicklow and Wexford Ry. v. Slattery*, (1878) 3 App. Cas. 1155.  
Discussed. *CUTSFORTH v. JOHNSON C. A.* [1913] W. C. & Ins. Rep. 131
- Duke v. Davis* - - - [1893] 2 Q. B. 107, 260  
Followed. *BUCKLEY & BEACH v. NATIONAL ELECTRIC THEATRES, LTD.* [1913] 2 K. B. 277
- Dunbar v. Harcey* - - - [1913] W. N. 189  
Affirmed - C. A. [1913] W. N. 207
- Dungannon (Lord) v. Smith*, (1846) 12 Cl. & F. 546.  
Referred to. *In re FANE. FANE v. FANE* - - - C. A. [1913] 1 Ch. 404
- Durant v. Tiley* - - - (1819) 7 Price, 577  
Referred to. *MACMAHON v. MACMAHON C. A. (Ir.)* [1913] 1 I. R. 428
- Duris v. Wilsons and Clyde Coal Co., Ltd.*, [1912] A. C. 513.  
Distinguished. *GRAY v. SHOTTS IRON CO., LTD.* - Ct. Sess. 1912 S. C. 1267
- Dyke v. Stephens* - - - (1885) 30 Ch. D. 189  
Followed. *PINK v. J. A. SHARWOOD & CO.* - - - [1913] 2 Ch. 286
- Dyson v. Att.-Gen.* - - - [1912] 1 Ch. 159  
Followed. *LORD MOWBRAY v. ATT.-GEN.* - - - 29 T. L. R. 115
- E. v. E.* - - - (1907) 23 T. L. R. 364  
Distinguished. *WALKER v. WALKER* 107 L. T. 655
- Eustwood v. Ashton*, [1913] 2 Ch. 39; [1913] W. N. 129.  
Reversed - C. A. [1913] W. N. 325
- Eccles v. Mills* - - - [1898] A. C. 360  
Applied. *In re HUGHES. ELLIS v. HUGHES* - - - [1913] 2 Ch. 491
- Edgerton v. Moore* - - - [1912] 2 K. B. 308  
Discussed. *ELLIS v. FAIRFIELD SHIP-BUILDING AND ENGINEERING CO. Ct. Sess.* [1913] W. C. & Ins. Rep. 88
- Edinburgh Corporation v. British Linen Bank*, 1912 S. C. 139.  
Reversed - H. L. (Sc.) [1913] A. C. 133
- Ehrman v. Bartholomew* - [1898] 1 Ch. 671  
Referred to. *CHAPMAN v. WESTERBY* [1913] W. N. 277
- Eichbaum v. City of Chicago Grain Elevators, Ltd.*, [1891] 3 Ch. 459.  
Followed. *ROWELL v. JOHN ROWELL & SON, LTD.* - - - [1912] 2 Ch. 609
- Elderslie Steamship Co. v. Borthwick*, [1905] A. C. 93.  
Referred to. *INGRAM & ROYLE, LTD. v. SERVICES MARITIMES DU TROPIC* [1913] W. N. 45
- Ellis v. Banyard* - - - (1911) 106 L. T. 51  
Referred to. *POULTON v. MOORE Div. Ct.* [1913] W. N. 360
- Ellis v. Ellis* - - - [1905] 1 Ch. 613  
Applied. *HEWSON v. SHELLEY* [1913] 2 Ch. 384
- Ellis v. Glover & Hobson* - [1908] 1 K. B. 388  
Distinguished. *In re MORRISON, JONES & TAYLOR* - - - 108 L. T. 675
- Ellis v. Pond* - - - [1898] 1 Q. B. 426  
Distinguished. *In re FINLAY. C. S. WILSON & CO. v. FINLAY C. A.* [1913] 1 Ch. 565
- Erlanger v. New Sombbrero Phosphate Co.*, (1878) 3 App. Cas. 1218  
Followed. *OMNIUM ELECTRIC PALACES, LD. v. BAINES* - [1913] W. N. 245
- Errington v. Rorke*, (1857) 6 Ir. C. L. Rep. 279, 316.  
Dicta in, disapproved. *HEWSON v. SHELLEY* - - - [1913] 2 Ch. 384
- Erskine, Greenford & Co. v. Sachs*, [1901] 2 K. B. 504.  
Followed. *In re FINLAY. C. S. WILSON & CO. v. FINLAY C. A.* [1913] 1 Ch. 565

- Espuela Land and Cattle Co., In re*, [1909] 2 Ch. 187.  
Referred to. *In re NATIONAL TELEPHONE Co., LD.* - 109 L. T. 389
- Etches v. Etches* - (1856) 3 Drew. 441  
The principle of, applied. *In re SEATON. ELLIS v. SEATON* - [1913] 2 Ch. 614
- Evans v. Evans* - [1892] 2 Ch. 173, 186  
Dictum of Lindley L.J. in, considered. *In re DAVIDSON'S SETTLEMENT. CATTERMOLE DAVIDSON v. MUNBY* - [1913] 2 Ch. 498
- Exroy (or Exron) v. Nicholas*, (1733) 2 Eq. C. Ab. 488; 1 De G. & Sm. 118, n.  
Followed. *STOCKS v. WILSON* - [1913] 2 K. B. 235
- Eyre v. New Forest Highway Board*, (1892) 56 J. P. 517.  
Doubted. *CABABÉ v. WALTON-ON-THAMES D. C.* - H. L. (E.) [1913] W. N. 369
- Farncombe's Trusts, In re* - (1878) 9 Ch. D. 652  
Followed. *In re WITTY. WRIGHT v. ROBINSON* - [1913] 2 Ch. 666
- Fenwick v. Croydon Rural Sanitary Authority*, [1891] 2 Q. B. 216.  
Applied. *CABABÉ v. WALTON-UPON-THAMES U. D. C.* - C. A. [1913] 1 K. B. 481
- Finlay, In re, C. S. Wilson & Co. v. Finlay*, [1913] 1 Ch. 247.  
Affirmed - C. A. [1913] 1 Ch. 565
- Fitzroy v. Cave* - [1905] 2 K. B. 364  
Followed. *DEFRIES v. MILNE* - C. A. [1913] 1 Ch. 98
- Fleming v. L. C. C.* - [1911] A. C. 1  
Followed. *CLUDE v. LONDON C. C.* - Div. Ct. 11 L. G. R. 410
- Fletcher v. London and North Western Ry. Co.*, [1892] 1 Q. B. 122.  
Followed. *CROSS v. RIX* - Div. Ct. 11 L. G. R. 151
- Fletcher v. Rylands*, (1868) L. R. 3 H. L. 330  
Distinguished. *RICKARDS v. LOTHIAN* - P. C. 57 S. J. 281
- Forsdike v. Stone* - (1868) L. R. 3 C. P. 607  
Followed. *BARKER v. LEWIS & PEAT* - C. A. [1913] 3 K. B. 34
- Forster v. Baker* - [1910] 2 K. B. 636  
Referred to. *In re FRESHWATER, YARMOUTH AND NEWPORT RY. CO., LD.* - [1913] W. N. 184
- Foss v. Best* - [1906] 2 K. B. 105  
Not followed. *WILLS & SONS v. MCSHERRY* - Div. Ct. [1913] 1 K. B. 20
- Foster v. Foster* - (1875) 1 Ch. D. 588  
Applied. *HOPKINSON v. RICHARDSON* - [1913] 1 Ch. 284
- Freeland v. Summerlee Iron Co., Ld.*, 1912 S. C. 1145.  
Affirmed, *sub nom.* *SUMMERLEE IRON CO., LD. v. FREELAND* - H. L. (Sc.) [1913] W. N. 34
- Fulham Parish v. Woolwich Union*, [1897] A. C. 255.  
Applied. *TEWKESBURY UNION v. UPTON-ON-SEVERN UNION* - Div. Ct. 10 L. G. R. 1019
- Furtado v. City of London Brewery Co.*, [1913] W. N. 310.  
Affirmed - C. A. [1913] W. N. 354
- "*Galileo*," *The* - - - 18 Com. Cas. 146  
Affirmed - C. A. 30 T. L. R. 26
- Gandy v. Gandy* - (1885) 30 Ch. D. 57  
Followed. *DAVIS v. MARRABLE* - [1913] W. N. 208
- Gard v. Commissioners of Sewers*, (1885) 28 Ch. D. 486.  
Referred to. *DAVIES v. LONDON CORPORATION* - [1913] W. N. 73
- Garnett Orme and Hargreave's Contract, In re*, (1883) 25 Ch. D. 595.  
Followed. *In re JOHNSON'S SETTLED ESTATES* - [1913] W. N. 222
- Gaudet Frères Steamship Co., In re*, (1879) 12 Ch. D. 882.  
Distinguished. *In re HEARN. DEBERNADINO v. HEARN* - [1913] W. N. 81
- General Motor Car Co., Ld., In re*, (1912) 56 S. J. 573.  
Explained. *CONSOLIDATED GOLD FIELDS OF SOUTH AFRICA v. SIMMER AND JACK EAST, LD.* - 82 L. J. (Ch.) 214
- George, In re* - (1877) 5 Ch. D. 837  
Observations of James L.J. at p. 843 quoted. *In re STEWART. STEWART v. BOSANQUET* - [1913] W. N. 183
- German v. Chapman*, (1877) 7 Ch. D. 271, 279  
Observations of James L.J. in, applied. *SOBEY v. SAINSBURY* - [1913] 2 Ch. 513
- Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794  
Referred to. *DAVIES v. LONDON CORPORATION* - [1913] W. N. 73
- Gibbs, In re. Martin v. Harding*, [1907] 1 Ch. 465.  
Not followed. *In re STEPHEN* - [1913] W. N. 210
- Giles, In re, Jones v. Pennefather*, [1896] 1 Ch. 956.  
Not followed. *In re BEAVAN. DAVIES, BANKS & Co. v. BEAVAN* - [1913] 2 Ch. 595
- Gillow v. Durham County Council*, [1911] 2 K. B. 1074.  
Reversed - H. L. (E.) [1913] A. C. 54
- Ginger, In re* - [1897] 2 Q. B. 461  
Followed and approved. *HOLLINS-HEAD v. P. AND H. EGAN, LD.* - [1913] A. C. 564
- Girdlestone v. Brighton Aquarium*, (1878) 3 Ex. D. 137.  
Followed. *FORBES v. SAMUEL* - [1913] 3 K. B. 706
- Glasgow and South Western Ry. Co. v. Boyd & Forrest*, 1911 S. C. 33.  
Reversed H. L. (Sc.) [1913] A. C. 404

- Glenfruin, The* - (1885) 10 P. D. 103  
Followed. INGRAM & ROYLE, LD. v.  
SERVICES MARITIMES DU TRÉPORT  
[1913] 1 K. B. 538
- Glenie v. Smith* - [1908] 1 K. B. 263  
Distinguished. M. T. SHAW & Co. v.  
HOLLAND - C. A. [1913] 2 K. B. 15
- Glenwood Lumber Co., Ltd. v. Phillips*, [1904]  
A. C. 405.  
Followed. MCPHERSON v. TEMIS-  
KAMING LUMBER Co., LD.  
P. C. [1913] A. C. 145
- Godwin v. Lords Commissioners of the Admi-  
nistrality*, [1912] 2 K. B. 26.  
Affirmed - H. L. (E.) [1913] A. C. 638  
Observations of Fletcher Moulton L.J.  
in, distinguished. HOWARTH v. A.  
KNOWLES & SONS, LD.  
C. A. [1913] 3 K. B. 675
- Goodisson v. Goodisson* - [1913] 1 I. R. 31  
Reversed on the facts  
C. A. (Ir.) [1913] 1 I. R. 218
- Goodman v. Robinson* - (1886) 16 Q. B. D. 332  
Applied. *In re FRESHWATER, YAR-  
MOUTH AND NEWPORT RY. Co., LD.*  
[1913] W. N. 184
- Gordon v. St. Mary Abbots, Kensington (Vestry)*,  
[1894] 2 Q. B. 742.  
Referred to. DAVIES v. LONDON COR-  
PORATION - [1913] 2 Ch. 648
- Goss v. Lord Nugent* - (1833) 5 B. & Ad. 58  
Distinguished. MORRELL v. STUDD &  
MILLINGTON - [1913] W. N. 273
- Gossamee Sree Greedhareejee v. Rumanlolljee  
Gossamee*, (1889) L. R. 16 Ind. App. 137.  
Distinguished. MOHAN LALJI v.  
GORDHAN LALJI MAHARAJ  
P. C. I. R. 40 Ind. App. 97
- Gould v. Curtis* - [1912] 1 K. B. 635  
Affirmed - C. A. [1913] 3 K. B. 84
- Gourlay Brothers & Co. (Dundee), Ltd. v.  
Sweeney*, (1906) 8 F. 965.  
Considered. SUMMERLEE IRON Co. v.  
FREELAND - [1913] A. C. 221
- Gray, In re, Gray v. Gray*, [1896] 1 Ch. 620  
Followed. *In re DOWLING. DOWLING  
v. DOWLING* - 108 L. T. 671
- Graysbrook v. Fox* - (1865) 1 Plowd. 275  
Applied. HEWSON v. SHELLEY  
[1913] 2 Ch. 384
- Great Central Railway v. Banbury Union*,  
[1909] A. C. 78.  
Considered and explained. EAST  
LONDON RAILWAY JOINT COMMITTEE  
v. GREENWICH UNION ASSESSMENT  
COMMITTEE - C. A. [1913] 1 K. B. 612
- Great Central Ry. Co. v. Midland Ry. Co.*,  
[1912] 1 Ch. 206.  
Affirmed H. L. (E.) [1913] W. N. 294
- Great Eastern Ry. Co. v. Goldsmid*, (1884)  
9 App. Cas. 927.  
Followed. ATT.-GEN. v. HORNIB  
C. A. [1913] 2 Ch. 140
- Great Northern Ry. Co. v. Rimell* (should be  
*Great Western Ry. Co. v. Rimell*),  
(1856) 18 C. B. 575.  
Considered. GROVER v. CHELTENHAM  
AND EAST GLOUCESTERSHIRE BUILD-  
ING SOCIETY - [1913] 2 K. B. 100
- Great Western Ry. Co. v. Bennett*, (1867) L. R.  
2 H. L. 27.  
Discussed. HOWLEY PARK COAL AND  
CANNEL Co. v. LONDON AND NORTH  
WESTERN RY. Co. - H. L. (E.)  
[1913] A. C. 11
- Great Western Ry. Co. v. Rimell*, (1856) 18 C. B.  
575 (there entitled *Great Northern Ry.  
Co. v. Rimell*).  
Considered. GROVES v. CHELTENHAM  
AND EAST GLOUCESTERSHIRE BUILD-  
ING SOCIETY - [1913] 2 K. B. 100
- Green, In re, Baldoock v. Green*, (1888) 40  
Ch. D. 610.  
Followed. *In re CRESSWELL. LINE-  
HAM v. CRESSWELL* - [1913] W. N. 177
- Greene v. Greene* - (1869) I. R. 3 Eq. 90, 629  
Distinguished. HICKEY v. HICKEY  
C. A. (Ir.) [1913] 1 I. R. 390
- Greenlands v. Wilmshurst* - 29 T. L. R. 64  
Affirmed on one point and reversed on  
another - C. A. [1913] 3 K. B. 507
- Greig v. National Amalgamated Union of Shop  
Assistants, Warehousemen and Clerks*,  
(1906) 22 Times L. R. 274.  
Applied. ORAM v. HUTT  
[1913] 1 Ch. 259
- Grivell v. Malpas* - [1906] 2 K. B. 32  
Distinguished. REX v. PUCK & Co.,  
LD. - 11 L. G. R. 136
- Groves v. Lord Wimborne*, [1898] 2 Q. B. 402,  
415.  
Applied. WOODS v. WINSKILL  
[1913] W. N. 212
- Griffith, In re. Carr v. Griffith*, (1879) 12  
Ch. D. 655.  
Distinguished. *In re SALE. NISBET  
v. PHILP* - [1913] 2 Ch. 697
- H. (falsely called C.) v. C.*, (1859) 29 L. J.  
(P. & M.) 29; 1 Sw. & Tr. 605.  
Followed and approved. SCOTT v.  
SCOTT - [1913] A. C. 417
- Hackney Union v. Kingston-upon-Hull Incorpo-  
ration for the Poor*, [1912] A. C. 475.  
Followed and applied. TEWKESBURY  
UNION v. UPTON-ON-SEVERN UNION  
[1913] 3 K. B. 475
- Hadley v. Baxendale* - (1854) 9 Ex. 341  
Referred to. THE "CAIRNBARN"  
[1913] W. N. 165
- Hadley v. McDougall* - (1872) L. R. 7 Ch. 312  
Referred to. BALFOUR v. TILLET  
[1913] W. N. 70
- Hallbronn v. International Horse Agency and  
Exchange, Ltd.*, [1908] 1 K. B. 270.  
Questioned. WILLIAMS v. LISTER &  
Co. - C. A. [1913] W. N. 295

- Hamill v. Lilley* - (1887) 19 Q. B. D. 83  
Distinguished. *MANKS v. WHITELEY*  
[1913] 1 Ch. 581
- Hamilton v. Pandorf* - (1887) 12 App. Cas. 518  
Referred to. INGRAM & ROYLE, LD. v.  
SERVICES MARITIMES DU TRÉPORT  
[1913] 1 K. B. 538
- Hammond v. Bussey* - (1887) 20 Q. B. D. 79  
Referred to. THE "CAIRNBHAIN"  
[1913] W. N. 165
- Hand v. Blow* - - - [1901] 2 Ch. 721  
Referred to. *In re J. W. ABBOTT &  
Co.* - [1913] W. N. 284
- Hanley v. Edinburgh Corporation*, 1912 S. C.  
1199.  
Reversed - H. L. (Sc.) [1913] A. C. 488
- Hanrahan v. Leigh-on-Sea U. D. C.*, [1909] 2  
K. B. 257.  
Followed. JAMES v. TUDOR  
Div. Ct. 11 L. G. R. 452
- Harburg India Rubber Comb Co. v. Martin*,  
[1902] 1 K. B. 778.  
Dicta in, discussed. DAVYS v. BUSWELL  
[1913] 2 K. B. 47
- Hargreaves, In re, Hargreaves v. Hargreaves*,  
(1908) 88 L. T. 100.  
Considered and applied. *In re HART.*  
HART v. ARNOLD - 107 L. T. 757  
Distinguished. *In re CRAVEN. WATSON*  
v. CRAVEN - - - [1913] W. N. 347
- Harris v. Judge* - - - [1892] 2 Q. B. 565  
Followed. BUCKLEY & BEACH v.  
NATIONAL ELECTRIC THEATRES, LD.  
[1913] 2 K. B. 277
- Harrison, In re, Latimer v. Harrison*, (1886)  
32 Ch. D. 395.  
The principle of, applied. *In re*  
BEAVAN. DAVIES, BANKS & Co. v.  
BEAVAN - - - [1913] 2 Ch. 595
- Harrowing Steamship Co. v. Thomas*, [1912] 3  
K. B. 321.  
Affirmed - C. A. [1913] 2 K. B. 171
- Hart, In re, Ex parte Green*, [1912] 3 K. B. 6  
Followed. *In re SHRAGER*  
108 L. T. 346
- Harcey, In re* - - - [1912] 2 L. R. 170  
Reversed sub nom. HOLLINSHEAD v.  
P. AND H. EGAN, LD.  
H. L. (I.) [1913] A. C. 564
- Harvey v. Stracey* - (1852) 1 Drew. 73  
Applied. *In re WITTY. WRIGHT v.*  
ROBINSON - [1913] 2 Ch. 666
- Harwood v. Wyken Colliery Co.*, [1913] 2 K. B.  
158.  
Followed. McNALLY v. FURNESS,  
WITTY & Co. - C. A. [1913] 3 K. B. 605
- Hawksley v. Outram* - [1892] 3 Ch. 359  
Applied. MORRELL v. STUDD & MIL-  
LINGTON - [1913] 2 Ch. 648
- Hay v. Swedish and Norwegian Ry. Co.*, (1892)  
8 T. L. R. 775.  
Followed. *In re J. W. ABBOTT & Co.*  
ABBOTT v. J. W. ABBOTT & Co.  
[1913] W. N. 284
- Hayes, In re* - - - [1899] 2 I. R. 206  
Followed and approved. HOLLIN-  
SHED v. P. AND H. EGAN, LD.  
H. L. (I.) [1913] A. C. 564
- Haylock v. Sparke* - (1853) 1 E. & B. 471  
Followed. LANSBURY v. RILEY  
Div. Ct. 109 L. T. 440
- Hazeldine's Trusts, In re*, [1908] 1 Ch. 84 at  
p. 36.  
Followed. *In re FOX. BROOKS v.*  
MARSTON - [1913] 2 Ch. 75
- Healey v. Batley Corporation*, (1875) L. R. 19  
Eq. 375.  
Discussed. CABABÉ v. WALTON-UPON  
THAMES U. D. C.  
C. A. [1913] 1 K. B. 481
- Heard v. Pichthorne* - 6 B. W. C. C. N. 9  
Reversed - C. A. 6 B. W. C. C. N. 53
- Hearn, In re, Bertodano (or De Bernadino) v.*  
*Hearn*, 108 L. T. 452; [1913] W. N. 81.  
Affirmed - C. A. 108 L. T. 737; [1913]  
W. N. 103
- Heathcote, In re* - - - [1904] 1 Ch. 826  
Followed. *In re CRESSWELL*  
[1913] W. N. 177
- Herbert v. Herbert* - - - [1912] 2 Ch. 268  
Distinguished. HOPKINSON v. RICHARD-  
SON - - - [1913] W. N. 19
- Herbert's Trustees v. Inland Revenue*, (1913),  
50 S. L. R. 569, reported sub nom.  
*Inland Revenue Commissioners v. Her-*  
*bert*, [1913] A. C. 326.  
Discussed. LUMSDEN v. INLAND  
REVENUE COMMS. [1913] 3 K. B. 809
- Hick v. Raymond & Reid* - [1893] A. C. 22  
The principle laid down in, followed.  
SIMS & Co. v. MIDLAND RY. CO.  
Div. Ct. [1913] 1 K. B. 103
- Hickman v. Haynes*, (1875) L. R. 10 C. P. 598,  
605.  
Referred to. MORRELL v. STUDD &  
MILLINGTON - [1913] W. N. 273
- Higginson v. Hall* - (1879) 10 Ch. D. 235  
Not followed. PINK v. J. A. SHAR-  
WOOD & Co. - [1913] 2 Ch. 286
- Hindle v. Taylor* - (1855) 5 D. M. & G. 577  
Distinguished. *In re BEAUMONT.*  
BRADSHAW v. PACKER  
[1913] 1 Ch. 325
- Hobson v. Gorringe* - - - [1897] 1 Ch. 182  
Distinguished. *In re MORRISON, JONES*  
& TAYLOR, LD. - 108 L. T. 675
- Holgate v. Jennings* - (1857) 24 Beav. 623  
Referred to. *In re MCEUEN. MCEUEN*  
v. PHELPS - [1913] 2 Ch. 404
- Holleran v. Bagnell* - (1880) 6 L. R. Ir. 333  
Dicta of Lord Morris, when Chief Justice,  
in, overruled. TAFF VALE RY. CO. v.  
JENKINS - - - [1913] A. C. 1
- Hope v. Hope* - - - (1858) 1 Sw. & Tr. 94  
Followed. BROOKING-PHILLIPS v.  
BROOKING-PHILLIPS - - - C. A.  
[1913] W. N. 54

- Hopkins v. Great Northern Ry. Co.*, (1877) 2 Q. B. D. 224.  
Referred to. *EARL OF DYSART v. HAMMERTON* - [1913] W. N. 125
- Horn v. Lords Commissioners of the Admiralty*, [1911] 1 K. B. 24.  
Followed. *GODWIN v. LORDS COMMRS. OF THE ADMIRALTY* [1913] A. C. 638
- HOWARTH v. A. KNOWLES & SONS, LD.* C. A. [1913] 3 K. B. 675
- Huggott v. Miers* - [1908] 2 K. B. 278  
Followed. *DOBSON v. HORSLEY* 30 T. L. R. 148
- Hughes v. Justin* - [1891] 1 Q. B. 667  
Followed. *MUIR v. JENKS* C. A. [1913] 2 K. B. 412
- Hughes v. Oxenham* - [1913] 1 Ch. 181  
Reversed - C. A. [1913] 1 Ch. 254
- Hulse v. Hulse* - (1871) L. R. 2 P. & M. 259  
Followed. *SINCLAIR v. FELL* [1913] 1 Ch. 155
- Hunt v. Hunt* - 4 De G. F. & J. 221, at p. 226  
Referred to. *MACMAHON v. MACMAHON* C. A. (Ir.) [1913] 1 I. R. 428
- Hunter & Co. v. Stubbs, Ltd.* - (1903) 5 F. 920  
Considered. *STUBBS v. RUSSELL* H. L. (Sc.) [1913] A. C. 386
- Hyatt, In re* - (1888) 38 Ch. D. 609  
Referred to. *In re BLOW. GOVERNORS OF ST. BARTHOLOMEW'S HOSPITAL v. CAMDEN* - [1913] 1 Ch. 358
- Illingworth v. Houldsworth* - [1904] A. C. 355  
Followed. *In re MORRISON, JONES & TAYLOR, LD. COOKES v. THE CO.* 108 L. T. 675
- Ingram & Royle, Ltd. v. Services Maritimes du Tréport, Ltd.*, [1913] 1 K. B. 538.  
Reversed - C. A. [1913] W. N. 326
- Inland Revenue Commrs. v. Anglesey (Marquess of)*, [1913] 1 K. B. 356.  
Reversed - C. A. [1913] 3 K. B. 62
- Inland Revenue Commrs. v. Fitzwilliam (Earl)*, [1913] 1 K. B. 184.  
Affirmed - C. A. [1913] 2 K. B. 593
- Inland Revenue Commrs. v. Gribble*, [1913] 1 K. B. 220.  
Affirmed - C. A. [1913] 3 K. B. 212
- Inland Revenue Commrs. v. Herbert*, [1913] A. C. 326.  
Discussed. *LUMSDEN v. INLAND REVENUE COMMRS.* [1913] 2 K. B. 809
- Inland Revenue Commrs. v. Herbert*, 1912 S. C. 348.  
Reversed - H. L. (Sc.) [1913] A. C. 326
- Inland Revenue Commrs. v. Joicey (No. 2)*, [1913] 1 K. B. 458.  
Affirmed - C. A. [1913] 2 K. B. 580
- Inland Revenue Commrs. v. Muller*, [1891] A. C. 217.  
Referred to. *URBAN v. INLAND REVENUE COMMRS.* - C. A. 29 T. L. R. 141
- James v. James* - - - L. R. 13 Eq. 421  
Referred to. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL* 30 R. P. C. 433
- Jee v. Thurlow* - - - (1824) 2 B. & C. 547  
Referred to. *MACMAHON v. MACMAHON* C. A. (Ir.) [1913] 1 I. R. 428
- Jenkins v. Robertson* - - - (1854) 2 Drew. 351  
Followed. *In re A DEBTOR (No. 14 of 1913)* - Div. Ct. [1913] 3 K. B. 11
- Jenkins v. Taff Vale Ry. Co.* - 106 L. T. 715  
Affirmed - H. L. (E.) [1913] A. C. 1
- Jenkins & Sons v. Coomber* - [1898] 2 Q. B. 168  
Approved of. *M. T. SHAW & CO. v. HOLLAND* - C. A. [1913] 2 K. B. 15
- Jennes, In re* - - - (1909) 53 S. J. 376  
Applied. *OLPHERTS v. CORYTON* [1913] 1 I. R. 211
- Jesson v. Wright* - - - (1820) 2 Bh. 1, 57  
Applied. *In re SIMCOE. VOWLER-SIMCOE v. VOWLER* - [1913] 1 Ch. 552
- John Tweedle & Co., In re* - [1910] 2 K. B. 697  
Followed. *In re ARTHUR WILLIAMS & CO. Ex parte THE OFFICIAL RECEIVER* - [1913] 2 K. B. 88
- Johnson v. Kearley* - - - [1908] 2 K. B. 514  
Distinguished. *ASTON v. KELSEY* [1913] 3 K. B. 314
- Johnson v. Rex* - - - [1904] A. C. 817  
Applied. *VAITHINATHA PILLAI v. THE KING-EMPEROR* - P. C. 29 T. L. R. 709
- Johnson's Patent, In re* - [1909] 1 Ch. 114  
Followed. *In re TOULSON'S PATENT* 30 R. P. C. 597
- Jolly v. Brown & Others* - - - 109 L. T. 210  
Affirmed - C. A. 109 L. T. 532
- Jolly v. Kine* - - - [1907] A. C. 1, 7, 8  
Observations of Lord Atkinson in, considered. *DAVIS v. MARRABLE* [1913] 2 Ch. 421
- Jones, Ex parte, In re Jones*, (1881) 18 Ch. D. 109.  
Followed. *STOCKS v. WILSON* [1913] W. N. 84
- Jones, In re, Calver v. Lawton*, (1885) 31 Ch. D. 440.  
Not followed - [1913] 1 I. R. 211
- Jones v. Laxington* - - - [1908] 1 K. B. 253  
Followed. *CRAWFORD v. WHITE CITY RINK (NEWCASTLE-ON-TYNE), LD.* 29 T. L. R. 318
- Joseph v. Law Integrity Insurance Co., Ltd.*, [1912] 2 Ch. 581.  
Observations in, approved. *GOULD v. CURTIS* - C. A. [1913] 3 K. B. 84
- Julius v. Lord Bishop of Oxford*, (1880) 5 App. Cas. 214.  
Followed. *REX v. MITCHELL. Ex parte LIVESEY* - Div. Ct. [1913] 1 K. B. 561
- Jupp, In re, Jupp v. Buckwell*, (1888) 39 Ch. D. 148  
Distinguished. *In re JEFFERY. NUSSEY v. JEFFERY* - [1913] W. N. 339



- Juson v. Dixon* - - (1813) 1 M. & S. 601  
Followed. *MACGREGOR v. CLAMP & SON* - Div. Ct. [1913] W. N. 342
- Kaufman v. Gerson* - - [1904] 1 K. B. 591  
Applied. *SOCIÉTÉ DES HÔTELS RÉUNIS v. HAWKER* - 29 T. L. R. 578
- Kauri Timber Co. v. New Zealand Taxes Commrs.*, 31 N. Z. L. R. 617.  
Affirmed - - P. C. 29 T. L. R. 671
- Keane's Estate, In re*, [1908] 1 I. R. 215, 224, 225  
Applied. *In re SIMCOE. VOWLER-SIMCOE v. VOWLER* - [1913] 1 Ch. 552
- Kearsley v. Philips* - (1883) 10 Q. B. D. 465  
Followed. *COOMES & SON v. HAYWARD* [1913] 1 K. B. 150
- Kearsley v. Philips* - (1882) 10 Q. B. D. 36  
Distinguished. *FORBES v. SAMUEL* [1913] 3 K. B. 706
- Kent v. Fittall (No. 4)* - [1911] 2 K. B. 1102  
Followed. *HAVERGROFT v. DEWEY*  
Div. Ct. 11 L. G. R. 28
- Kent Coal Concessions v. Duguid*, [1910] A. C. 452.  
Distinguished. *IRISH AGRICULTURAL WHOLESALE SOCIETY v. MCCOWAN*  
C. A. (Ir.) [1913] 2 I. R. 313
- Kepitigalla Rubber Estates, Ltd. v. National Bank of India*, [1909] 2 K. B. 1010.  
Followed. *WALKER v. MANCHESTER AND LIVERPOOL DISTRICT BANKING CO.* - - - 108 L. T. 728
- Kerr v. William Baird & Co.* - 1911 S. C. 701  
Followed. *BROWN v. SUMMERLEE IRON CO.* - - - Ct. Sess. [1913]  
W. C. & Ins. Rep. 45
- "*Khedive*," *The* - - - (1879) 5 P. D. 1  
Distinguished. *MANKS v. WHITELEY* [1913] 1 Ch. 581
- Kilford v. Blaney* - (1885) 31 Ch. D. 56  
Referred to. *In re SMITH. SMITH v. SMITH* - - - [1913] W. N. 170
- Kingston Cotton Mill Co., In re (No. 2)*, [1896] 2 Ch. 279, 284, 287.  
Referred to. *In re BOLIVIA (REPUBLIC OF) EXPLORATION SYNDICATE, LD.* [1913] W. N. 358
- Kirehner & Co. v. Gruban* - [1909] 1 Ch. 413  
Followed. *THE "CAP BLANCO"* [1913] P. 130
- Kirkland v. Peatfield* - [1903] 1 K. B. 756  
Followed. *In re FOX. BROOKS v. MARSTON* - - - [1913] 2 Ch. 75
- Knight v. Simmonds* - [1896] 2 Ch. 294, 297, 298  
Observations of Lindley L.J. in, applied. *SOBEY v. SAINSBURY* [1913] 2 Ch. 513
- Knight of St. Michael, The* - - [1898] P. 80  
Distinguished. *KACIANOFF v. CHINA TRADERS INSURANCE CO.* [1913] 3 K. B. 407
- Know v. Gye* - - (1872) L. R. 5 H. L. 656  
Distinguished. *GORDON v. HOLLAND*  
P. C. 82 L. J. (P. C.) 81
- Kolchmann v. Mewrice* [1903] 1 K. B. 534  
Followed. *HUGHES v. OXENHAM*  
A. [1913] 1 K. B. 254
- Kopitoff v. Wilson* - (1876) 1 Q. B. D. 377  
Followed. *INGRAM & ROYLE, LD. v. SERVICES MARITIMES DU TRÉPORT* [1913] 1 K. B. 538
- Kreglinger & Co. v. New Patagonia Meat and Cold Storage Co., Ltd.*, 29 T. L. R. 322.  
Reversed - *H. L. (E.)* [1913] W. N. 336; C. A. 29 T. L. R. 464
- Lacon's Settlement, In re*, [1911] 2 Ch. 17  
Applied. *In re DEALTRY. DAVENPORT v. DEALTRY* - [1913] W. N. 138
- Lacons v. Warmoll* - [1907] 2 K. B. 350, 364  
Dictum of Fletcher Moulton L.J. in, dissented from. *In re BLOW. GOVERNORS OF ST. BARTHOLOMEW'S HOSPITAL v. CAMDEN* - [1913] 1 Ch. 358
- Ladywell Mining Co. v. Brookes*, (1887) 35 Ch. D. 400, 408, 410, 411.  
Followed. *OMNIUM ELECTRIC PALACES, LD. v. BAINES* - [1913] W. N. 240
- Lamb v. Evans* - - [1893] 1 Ch. 218, 236  
Distinguished. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL* [1913] 2 Ch. 239
- Lambert v. Lambert* - (1873) L. R. 16 Eq. 320  
Observations on. *In re MCEUEN. MCEUEN v. PHELPS* - [1913] 2 Ch. 704
- Lancashire and Yorkshire Ry. Co. v. Liverpool Corporation*, (1912) 10 L. G. R. 575.  
Reversed - - C. A. 108 L. T. 872
- Law v. Garrett* - - (1877) 8 Ch. D. 46  
Followed. *THE "CAP BLANCO"* [1913] W. N. 166
- Law Car and General Insurance Corporation, In re*, [1912] W. N. 299.  
Reversed - C. A. [1913] W. N. 157; [1913] 2 Ch. 103
- Lawford v. Billericay R. D. C.*, [1903] 1 K. B. 772.  
The principle of, applied. *DOUGLASS v. RHYL URBAN COUNCIL* [1913] 2 Ch. 407
- Layland v. Boldy & Son, Ltd.*, (1913) 30 R. P. C. 249.  
Affirmed - - C. A. 29 T. L. R. 651
- Lea (R. J.), Ltd., In re an Application of*, [1912] 2 Ch. 32.  
Affirmed - - [1913] 1 Ch. 446  
Observations of Joyce J. in, disapproved. *In re TEOFANI'S TRADE MARK*  
C. A. [1913] W. N. 230
- Lea (R. J.), Ltd., In re an Application of*, [1913] 1 Ch. 446.  
Observations of Farwell L.J. at p. 453 in, approved. *TEOFANI & CO. v. TEOFANI*  
C. A. 30 R. P. C. 446
- Leary or Dick v. Alston* - 1911 S. C. 1248  
Affirmed on the evidence - [1913] A. C. 529

- Leconfield, In re* - (1904) 20 T. L. R. 347  
Followed. *In re LORD SWAYTHLING*  
29 T. L. R. 88
- Leeds and Hanley Theatres of Varieties, Ltd., In re*, [1902] 2 Ch. 809.  
Followed. *OMNIUM ELECTRIC PALACES, LD. v. BAINES* - [1913] W. N. 245
- Leeds Corporation v. Sugden*, (1911) 10 L. G. R. 81.  
Reversed - H. L. (E.) 11 L. G. R. 662
- Leeds Estate, Building and Investment Co. v. Shepherd*, (1887) 36 Ch. D. 787, 802.  
Referred to. *In re BOLIVIA (REPUBLIC OF) EXPLORATION SYNDICATE, LD.* - [1913] W. N. 358
- Lemprière v. Lange* - (1879) 12 Ch. D. 675  
Followed. *STOCKS v. WILSON*  
[1913] 3 K. B. 235
- Leonard and Ellis's Trade Mark*, (1884) 26 Ch. D. 288.  
Followed. *TEOFANI & CO., LD. v. TEOFANI* - C. A. 30 R. P. C. 446
- Leslie v. Leslie* - (1835) Ll. & G. t. Sug. 1, 3  
See *In re WEST. WESTHEAD v. ASP-LAND* - [1913] 2 Ch. 345
- Lewis v. Purley* - (1847) 16 M. & W. 733  
Applied. *In re FINLAY'S ESTATE*  
[1913] 1 I. R. 143
- Life and Health Assurance Association, Ltd., In re, Berry's Claim*, [1913] 2 Ch. 137, n.  
Approved. *In re LAW CAR AND GENERAL INSURANCE CORPORATION. J. J. KING & SONS' (LD.) CASE. OLD SILKSTONE COLLIERIES' (LD.) CASE*  
[1913] 2 Ch. 103
- Linen and Woollen Drapers, In re*, (1887) 58 L. T. 949.  
Distinguished. *MASONS OF SCOTLAND (GRAND LODGE) v. INLAND REVENUE COMMRs.* - Ct. of Sess. 6 T. C. 116
- Lines v. Usher* - (1897) 14 R. P. C. 206  
Followed. *CUMMINGS v. STEWART*  
[1913] 1 I. R. 95
- Liverpool and London and Globe Insurance Co. v. Bennett*, [1912] 2 K. B. 41.  
Affirmed - [1913] A. C. 610
- Liverpool Corporation v. Chorley Union Assessment Committee and Withnell Overseers*, [1912] 1 K. B. 270.  
Affirmed - H. L. (E.) [1913] A. C. 197
- Livingstone v. Ross* - [1901] A. C. 327  
Distinguished. *KELLY v. ENDERTON P. C.* [1913] A. C. 191
- Lloyd v. Grace, Smith & Co.*, [1912] A. C. 716,  
at p. 737.  
Applied. *MAIR v. RIO GRANDE RUBBER ESTATES, LD.*  
H. L. (Sc.) [1913] A. C. 853
- Lloyds Bank, Ltd. v. Swiss Bankverein*, (1912) 17 Com. Cas. 280.  
Affirmed - C. A. 18 Com. Cas. 52
- Logan v. Bank of Scotland (No. 2)*, [1906] 1 K. B. 141.  
Followed. *THE "CAP BLANCO"*  
[1913] P. 130
- London and General Bank (No. 2), In re*, [1895] 2 Ch. 673, 682—685.  
Referred to. *In re BOLIVIA (REPUBLIC OF) EXPLORATION SYNDICATE, LD.* - [1913] W. N. 358
- London and Globe Finance Corporation, Ltd. In re*, [1903] 1 Ch. 728, at p. 732.  
Definition of "to defraud" by Buckley J. approved. *REX v. BENNETT (BERKELEY)* C. C. A. 9 Cr. App. R. 141
- London and Manchester Plate Glass Co., Ltd. v. Heath*, (1913) 29 T. L. R. 103.  
Affirmed - C. A. 108 L. T. 1009
- London and North Western Ry. Co. v. Howley Park Coal and Cannel Co.*, [1911] 2 Ch. 97.  
Affirmed, *sub nom.* *HOWLEY PARK COAL AND CANNEL CO. v. LONDON AND NORTH WESTERN RY. CO.*  
H. L. (E.) [1913] A. C. 11
- London Corporation v. County of London Electric Supply Co.*, [1910] 2 Ch. 208.  
Referred to. *BATTERSEA B. C. v. COUNTY OF LONDON ELECTRIC SUPPLY CO., LD.* C. A. [1913] 2 Ch. 248
- London Joint Stock Bank v. Simmons*, [1892] A. C. 201.  
Followed. *FULLER v. GLYN, MILLS, CURRIE & CO.* - [1913] W. N. 362
- Lord Advocate v. Harvey's Trustees*, (1901) 39 Sc. L. R. 71.  
Referred to. *In re TORRINGTON*  
[1913] W. N. 271
- Louis v. Smellie*, [1895] W. N. 115; 73 L. T. 226, 228.  
Distinguished. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL*  
[1913] 2 Ch. 239
- Lovelace v. Lovelace* - (1583) Cro. Eliz. 40  
Distinguished. *In re FINLAY'S ESTATE*  
[1913] 1 I. R. 431
- Low v. General Steam Fishing Co.*, [1909] A. C. 523.  
Applied. *WEBBER v. WANSBOROUGH PAPER CO., LD.*  
C. A. [1913] 2 K. B. 615
- Lower Rhine and Württemberg Insurance Association v. Sedgwick*, [1899] 1 Q. B. 179.  
Distinguished. *RELIANCE MARINE INSURANCE CO. v. DUDER*  
C. A. [1913] 1 K. B. 265
- Lowery v. Walker* - [1911] A. C. 10  
Distinguished. *JOHNSTONE v. LOCHGELLY MAGISTRATES* - Ct. Sess. 1913 S. C. 1078
- Luby v. Warwickshire Miners' Association*, [1912] 2 Ch. 371.  
Followed. *PARR v. LANCASHIRE AND CHESHIRE MINERS' FEDERATION*  
[1913] W. N. 57
- Ludlow (Lord) v. Pike* - [1904] 1 K. B. 531  
Judgment of Bray J. following, affirmed. *TUFF v. GUILD OF DRAPERS OF THE CITY OF LONDON* - [1913] 1 K. B. 40

- Lumley v. Wagner*, (1852) 5 De G. & Sm. 485; 1 De G. M. & G. 604.  
Referred to. *CHAPMAN v. WESTERBY* [1913] W. N. 277
- Lumsden v. Inland Revenue Commrs.*, [1913] 1 K. B. 346.  
Affirmed - C. A. [1913] 3 K. B. 475
- Luxford v. Cheeke* - - - (1684) 3 Lev. 125  
The principle of, applied. *In re SEATON. ELLIS v. SEATON* [1913] 2 Ch. 614
- Lynch v. Nurdin* - - - (1841) 1 Q. B. 29  
Principle laid down in, applied. *RICKARDS v. LOTHIAN* P. C. 57 S. J. 281
- Macfarlane's Claim* - - - (1880) 17 Ch. D. 333  
The principle of, not adopted. *In re LAW CAR AND GENERAL INSURANCE CORPORATION. J. J. KING & SONS' (LD.) CASE. OLD SILKSTONE COLLIERIES' (LD.) CASE* [1913] 2 Ch. 103
- McGuigan v. Belfast Corporation*, (1887) 18 L. R. Ir. 89.  
Followed. *LLOYD v. BERMONDSEY GUARDIANS* - Div. Ct. 77 J. P. 72
- McIlwraith v. Green*, (1884) 13 Q. B. D. 897; 14 Q. B. D. 766.  
Followed. *DOYLE v. BRIGHTLINGSEA U. D. C.* - - [1913] W. N. 244
- Macintosh v. Dun* - - - [1908] A. C. 390  
Followed. *GREENLANDS, LD. v. WILMSHURST AND THE LONDON ASSOCIATION FOR PROTECTION OF TRADE* [1913] 3 K. B. 507
- Mackay, In re. Griessemann v. Carr*, [1911] 1 Ch. 300, at p. 307.  
Observations of Parker J. in, adopted. *In re ALLSOP. WHITTAKER v. BAMFORD* - - - [1913] W. N. 283
- Mackett v. Mackett* - - - (1872) L. R. 14 Eq. 49  
Distinguished. *HICKEY v. HICKEY* C. A. (Ir.) [1913] 1 I. R. 390
- McMahon v. Gaussen* - [1896] 1 I. R. 147  
Approved and followed. *In re HODGSON. WESTON v. HODGSON* - [1913] 1 Ch. 34
- Macmahon v. Macmahon* - [1913] 1 I. R. 154  
Affirmed C. A. (Ir.) [1913] 1 I. R. 428
- Macoun v. Erskine, Owenford & Co.*, [1901] 2 K. B. 493.  
Followed. *In re FINLAY. C. S. WILSON & Co. v. FINLAY* C. A. [1913] 1 Ch. 565
- Mahee College (Trustees of) v. Commissioner of Valuation*, 1 R. 4 C. L. 438.  
Referred to. *REX (BELFAST CORPORATION) v. RECORDER OF BELFAST* Div. Ct. (Ir.) [1913] 2 I. R. 439
- Mair v. Rio Grande Rubber Estates, Ltd.*, 1913 S. C. 183.  
Reversed - - [1913] A. C. 953
- Major v. South Kirkby, Featherstone and Hunsforth Collieries, Ltd.*, [1913] 2 K. B. 745.  
Followed. *LONGHURST v. "CLEMENT" (OWNERS)* - C. A. 6 B. W. C. C. 218
- Marchant, In re* - - - [1908] 1 K. B. 998  
Followed. *HAXBY v. WOOD ADVERTISING AGENCY, LD.* - - Div. Ct. [1913] W. N. 331
- Margetts and Ocean Accident and Guarantee Corporation, Ltd., In re*, [1901] 2 K. B. 792.  
Referred to. *BENNETT STEAMSHIP CO., LD. v. HULL MUTUAL STEAMSHIP PROTECTING SOCIETY, LD.* [1913] W. N. 224
- "Marie Gartz," The* - - - 29 T. L. R. 321  
Reversed - - - C. A. 30 T. L. R. 88
- Marine Torch Co. v. Holmes Marine Life Protection Association*, 29 R. P. C. 686.  
Affirmed - - - C. A. 30 R. P. C. 631
- Marke Wood, In re. Wodehouse v. Wood*, [1913] 1 Ch. 303.  
Affirmed. - - - [1913] 2 Ch. 574
- Murman's Trusts, In re* - (1878) 26 W. R. 621  
Followed. *In re BENNETT. GREENWOOD v. BENNETT* - [1913] 2 Ch. 318
- Marshall, In re. Marshall v. Marshall*, [1913] W. N. 148.  
Reversed - - - C. A. [1913] W. N. 338
- Martin v. Harding* - - - [1907] 1 Ch. 465  
Distinguished. *In re STEPHEN. STEPHEN v. STEPHEN* [1913] W. N. 210
- Mason v. Bolton's Library, Ltd.*, [1912] 2 K. B. 520.  
Reversed - - - C. A. [1913] 1 K. B. 83
- Mason v. Provident Clothing and Supply Co., Ltd.*, [1913] 1 K. B. 65.  
Reversed - - - [1913] A. C. 724
- Massey v. Heynes* - - - (1888) 21 Q. B. D. 330  
Followed. *COONEY v. WILSON AND HENDERSON* - - - C. A. (Ir.) [1913] 2 I. R. 402
- Measures Brothers, Ltd. v. Measures*, [1910] 1 Ch. 336, 346.  
Distinguished. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL* [1913] 2 Ch. 239
- Mehta v. Sutton* - - - - - 108 L. T. 214  
Affirmed - - - C. A. 109 L. T. 529
- Mercedes Daimler Motor Co., Ltd. v. F.I.A.T. Motor Car Co., Ltd.*, (1912) 30 R. P. C. 21.  
Reversed - - - C. A. 30 R. P. C. 21
- Merryweather v. Moore* - [1892] 2 Ch. 518, 524  
Distinguished. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL* [1913] 2 Ch. 239
- Mersey Dock and Harbour Board v. Lucas*, (1883) 2 T. C. 25.  
Followed. *CITY OF LONDON STEAM PACKET CO. v. O'BRIEN* Div. Ct. (Ir.) 6 T. C. 101

- Meters, Ltd. v. Metropolitan Gas Meters, Ltd.*, [1911] 28 R. P. C. 157.  
Considered and followed. WATSON, LAIDLAW & CO. v. POTT, CASSELS & WILLIAMSON - Ct. Sess. 30 R. P. C. 289
- Metropolitan Ry. Co. v. London C. C.*, [1911] A. C. 1.  
Referred to. CLODE v. LONDON C. C. Div. Ct. [1913] W. N. 25
- Metropolitan Water Board v. Avery*, [1913] 2 K. B. 257.  
Affirmed - C. A. [1913] W. N. 260
- Metropolitan Water Board v. Bunn*, [1913] 1 K. B. 134.  
Affirmed - C. A. [1913] 3 K. B. 181
- Metropolitan Water Board v. Colley's Patents, Ltd.*, [1912] A. C. 24.  
Followed. METROPOLITAN WATER BOARD v. AVERY - Div. Ct. [1913] W. N. 92
- Metropolitan Water Board v. Johnson*, (1912) 11 L. G. R. 113.  
Reversed - C. A. [1913] W. N. 196
- Metropolitan Water Board v. Phillips*, [1912] 2 Ch. 546.  
Reversed - H. L. (E.) [1913] A. C. 86
- Middleton v. Pollock* - (1876) 2 Ch. D. 104  
Explained. *In re COZENS. GREEN v. BRISLEY* - [1913] A. C. 478
- Midland Express, Ltd., In re, Pearson v. The Co.*, [1913] 1 Ch. 499.  
Affirmed - [1913] W. N. 306
- Midland Ry. Co. v. Great Western Ry. Co.*, L. R. 8 Ch. 841.  
Distinguished. GREAT CENTRAL RY. CO. v. MIDLAND RY. CO.  
H. L. (E.) [1913] W. N. 294
- Midwood v. Manchester Corporation*, [1905] 2 K. B. 597.  
Followed. CHARING CROSS, WEST-END AND CITY ELECTRICITY SUPPLY CO. v. LONDON HYDRAULIC POWER CO.  
[1913] 3 K. B. 442
- Miller v. Hancock* - [1893] 2 Q. B. 177  
Distinguished. DOBSON v. HORSLEY 30 T. L. R. 148
- Mills v. Carson* - (1893) 10 R. P. C. 9  
Distinguished. CUMMINGS v. STEWART (No. 2) - [1913] 1 I. R. 95
- Minturn v. Barry* - [1912] 3 K. B. 510  
Order of the C. A., so far as it ordered a new trial, reversed *sub nom.* BARRY v. MINTURN - [1913] A. C. 584  
Dictum of Bankes J. in MINTURN v. BARRY, [1911] 2 K. B. 265, overruled. BARRY v. MINTURN - [1913] A. C. 584
- Mitchell v. Morley* - [1913] W. N. 43  
Affirmed - C. A. [1913] W. N. 296
- Mole v. Wadworth* - (1913) 6 B. W. C. C. 128  
Distinguished. EDWARDS v. WINGHAM AGRICULTURAL IMPLEMENT CO., LD.  
C. A. [1913] 3 K. B. 596
- Monckton v. Pathé Frères Pathephone, Ltd.*, 29 T. L. R. 174.  
Reversed in part and affirmed in part C. A. [1913] W. N. 347
- Moore v. The Bishop of Oxford*, [1904] A. C. 283  
Distinguished. ELY (BISHOP OF) v. CLOSE - [1913] W. N. 249
- Morison v. Moat* - (1851) 9 Hare, 241  
Applied. AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL - [1913] 2 Ch. 239
- Morris v. Richards* - (1881) 45 L. T. 210  
Approved. GELMINI v. MORIGGIA [1913] 2 K. B. 549; [1913] W. N. 139
- Mundy's Settled Estates, In re*, [1891] 1 Ch. 399  
Adopted and applied. *In re HANBURY'S SETTLED ESTATES* - [1913] 1 Ch. 50
- Murphy v. Enniscorthy Union*, [1908] 2 I. R. 609.  
Applied. *In re NATIONAL INSURANCE ACT, 1911. In re SOUTH DUBLIN UNION OFFICERS* - [1913] 1 I. R. 244
- Musman v. Boret* - (1892) 40 W. R. 352  
Followed. DOYLE v. BRIGHTLINGSEA U. D. C. - [1913] W. N. 244
- Mutual Reserve Fund Life Association v. New York Life Insurance Co.*, (1896) 75 L. T. 528.  
Referred to. CHAPMAN v. WESTERBY [1913] W. N. 277
- National Starch Co., In re* - [1908] 2 Ch. 698  
Referred to. TEOFANI & CO., LD. v. TEOFANI - C. A. 30 R. P. C. 446
- National Telephone Co., Ltd. v. H. M. Postmaster-General*, [1913] 2 K. B. 614.  
Affirmed - H. L. (E.) [1913] A. C. 546
- Nelson Line (Liverpool) v. James Nelson & Sons*, [1908] A. C. 16.  
Followed. INGRAM & ROYLE, LD. v. SERVICES MARITIMES DU TRÉPORT [1913] 1 K. B. 538
- Nettleingham v. Powell* - [1913] 1 K. B. 113  
Affirmed - C. A. [1913] 3 K. B. 209
- New Invented Incandescent Gas Lamp Co., Ltd. v. M. Howlett & Co.*, 30 R. P. C. 169.  
Affirmed - C. A. 30 R. P. C. 699
- New Monckton Collieries, Ltd. v. Keeling*, [1911] A. C. 648.  
Distinguished. POTTS OR YOUNG v. NIDDRIE AND BENHAR COAL CO., LD. [1913] A. C. 531  
Followed. DOBBIE v. EGYPT AND LEVANT STEAMSHIP CO. - Ct. Sess. [1913] W. C. & Ins. Rep. 75
- New York Tuzicab Co., In re* - [1913] 1 Ch. 1  
Distinguished. *In re TILT COVE COPPER CO., LD. TRUSTEES, EXECUTORS, AND SECURITIES INSURANCE CORPORATION, LD. v. THE CO.* [1913] 2 Ch. 588

- New Zealand and Australian Land Co. v. Watson*, (1881) 7 Q. B. D. 374.  
Observations of Bramwell L.J. in (p. 382), quoted. *HENRY v. HAMMOND* Div. Ct. 82 L. J. (K. B.) 575; [1913] W. N. 85
- Newbery v. James* - (1817) 2 Mer. 446, 451 Distinguished. *AMBER SIZE AND CHEMICAL CO., LD. v. MENZEL* [1913] 2 Ch. 239
- Newspaper Proprietary Syndicate, Ltd., In re, Hopkinson v. Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349.  
Followed. *WOODS v. WINSKILL* [1913] W. N. 212
- Newton v. Cubitt* - (1862) 12 C. B. (N.S.) 32 Referred to. *EARL OF DYSART v. HAMMERTON* - [1913] W. N. 125  
*GENERAL ESTATES CO. v. BEAVER* [1913] 2 K. B. 433
- Newton v. Newton* - (1886) 11 P. D. 11 Explained and followed. *BURMESTER v. BURMESTER* - [1913] P. 76
- "*Niobe*," *The* - [1891] A. C. 401 Referred to. *BENNETT STEAMSHIP CO., LD. v. HULL MUTUAL STEAMSHIP PROTECTING SOCIETY, LD.* - [1913] W. N. 224
- Noakes v. Noakes and Hill* - (1877) 4 P. D. 60 Discussed. *BURMESTER v. BURMESTER* [1913] P. 76
- Noakes & Co., Ltd. v. Rice* - [1902] A. C. 24 Discussed and distinguished. *KREGLINGER (G. & C.) v. NEW PATAGONIA MEAT AND COLD STORAGE CO., LD.* H. L. (E.) [1913] W. N. 336
- Norman v. Villars* - (1877) 2 Ex. D. 359 Followed. *SINCLAIR v. FELL* [1913] 1 Ch. 155
- North, In re* - (1897) 76 L. T. 186 Observations on. *In re FRASER. IND v. FRASER* - [1913] 2 Ch. 224
- Northern Counties of England Fire Insurance Co., In re, Macfarlane's Claim*, (1880) 17 Ch. D. 337.  
Referred to. *In re LAW CAR AND GENERAL INSURANCE CORPORATION* 107 L. T. 818
- Nuttall v. Staunton* - (1825) 4 B. & C. 51 Followed. *LEWIS v. DAVIES* Div. Ct. [1913] 2 K. B. 37
- Oceanic Steam Navigation Co. v. Sutherland*, (1880) 16 Ch. D. 236, 244.  
Referred to. *HEWSON v. SHELLEY* [1913] W. N. 246
- Ogden v. Ogden (otherwise Philip)*, [1908] P. 46, at pp. 82, 83.  
The dicta of Lord Gorell inf adopted. *DE MONTAIGU v. DE MONTAIGU* [1913] P. 154
- O'Grady's Estate, In re, O'Grady v. Young*, 15 Ir. L. T. R. 45.  
Not followed. *In re MURPHY. PRENDERGAST v. MURPHY* [1913] 1 I. R. 504
- "*Okehampton*," *The* - - - [1913] P. 4  
*Reversed* - - - [1913] P. 173
- "*Olympic*," *The* - (1912) 28 T. L. R. 356  
Affirmed - C. A. [1913] W. N. 71
- O'Neill and Young, In re* (sub nom. *In re A. and B., Arranging Debtors*), (1912) 46 Ir. L. T. R. 142.  
Distinguished. *In re FRY* C. A. (Ir.) [1913] 2 I. R. 273
- "*Ophelia*," *The* - - - 29 T. L. R. 656  
Affirmed - - - 30 T. L. R. 61
- Orram v. Hutt* - [1913] 1 Ch. 259  
Affirmed - C. A. [1913] W. N. 314
- Orme, In re* - - - (1884) 50 L. T. 51  
The principle of, applied. *In re BEAVAN. DAVIES, BANKS & CO. v. BEAVAN* - [1913] 2 Ch. C95
- Osborne v. Amalgamated Society of Railway Servants*, [1910] A. C. 87.  
Followed. *PARR v. LANCASHIRE AND CHESHIRE MINERS' FEDERATION* [1913] W. N. 57
- P. v. P.* - - - (1912) 107 L. T. 721  
Affirmed, sub nom. *BROOKING-PHILLIPS v. BROOKING-PHILLIPS* C. A. [1913] P. 80
- Paddington Guardians v. St. Matthew, Bethnal Green, Guardians* - [1912] 2 K. B. 335  
Affirmed - C. A. [1913] 1 K. B. 508
- Paine v. Jones* - - - L. R. 18 Eq. 320  
Considered and applied. *In re TENNENT'S ESTATE* [1913] 1 I. R. 280
- Palace Hotel, Ltd., In re* - [1912] 2 Ch. 438  
Not followed. *In re DORCHAM GLOVES, LD.* - [1913] 1 Ch. 226  
Referred to. *In re SCHWEPES, LD.* [1913] W. N. 340
- Pawley and the London and Provincial Bank, In re*, [1900] 1 Ch. 58.  
Followed. *HEWSON v. SHELLEY* [1913] W. N. 246
- Payne v. N. Fortescue & Sons, Ltd.* [1912] 3 K. B. 346.  
Considered. *SUMMERLEE IRON CO. v. FREELAND* - [1913] A. C. 221
- Pearson's Trusts, In re*, (1872) 20 W. R. 522; 26 L. T. 393.  
Discussed but not followed. *SINCLAIR v. FELL* - [1913] 1 Ch. 155
- Pelan, In re* - - - (unreported)  
Followed. *In re FRY* - C. A. (Ir.) [1913] 2 I. R. 273
- Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India*, (1901) 5 Bomb. H. C. R. App.  
Approved. *SECRETARY OF STATE FOR INDIA IN COUNCIL v. MOMENT* P. C. L. R. 40 Ind. Ap. 8
- Perkins, In re* - - - (1893) 67 L. T. 743  
Discussed. *In re MARKE WOOD. WODEHOUSE v. WOOD* [1913] 1 Ch. 303  
*In re FRASER. IND v. FRASER* [1913] 2 Ch. 224

- Peto v. Blades* - - (1814) 5 Taunt. 657  
Referred to. *BAYLAS v. BISHOP OF LONDON* - - [1913] 1 Ch. 127
- Pett v. Fellows*, (1733) 1 Swans. 561, n., as explained by Sugden L.C. in *Leslie v. Leslie* (1835) Ll. & G. t. Sug. 1, 3.  
Distinguished. *In re WEST. WEST-HEAD v. ASPLAND* - [1913] 2 Ch. 345
- Pickavance v. Pickavance* - - [1901] P. 60  
Discussed and distinguished. *DAVIS v. MORTON* - Div. Ct. [1913] 2 K. B. 479
- Piddoe v. Burt* - - [1894] 1 Ch. 343  
Distinguished. *GORDON v. HOLLAND* - P. C. 82 L. J. (P. C.) 81
- Pierce v. Provident Clothing and Supply Co.*, [1911] 1 K. B. 997.  
Distinguished. *BUTT v. PROVIDENT CLOTHING AND SUPPLY CO.* - C. A. [1913] W. C. & Ins. Rep. 119
- "*Pieve Superiore*," *The* - (1874) L. R. 5 P. C. 482  
Followed. *THE "CAP BT ANCO"* - [1913] W. N. 166
- Pink, In re, Pink v. Pink* - [1912] 1 Ch. 498  
Varied - C. A. [1912] 2 Ch. 528
- Plant v. Collins; Decey, Claimant*, [1912] 2 K. B. 459.  
Affirmed - C. A. [1913] 1 K. B. 242
- Plumptre's Marriage Settlement, In re*, [1910] 1 Ch. 609, 616.  
Distinguished. *PULLAN v. KOE* - [1913] 1 Ch. 9
- Pope's Electric Lamp Co.'s Trade Mark, In re*, [1911] 2 Ch. 382.  
Disapproved. *In re TEOFANI'S TRADE MARK* - C. A. [1913] W. N. 230
- Potts or Young v. Niddrie and Benhar Coal Co., Ltd.*, 1912 S. C. 644.  
Reversed - - - [1913] A. C. 531
- Poyser, In re; Landon v. Poyser*, [1908] 1 Ch. 828  
Followed. *In re CRAVEN. WATSON v. CRAVEN* - [1913] W. N. 347
- Price v. Union Lighterage Co.*, [1913] 1 K. B. 750.  
Referred to. *JOSEPH TRAVERS & SONS, LD. v. COOPER* - 30 T. L. R. 93
- Prosser v. Wagner* - (1856) 1 C. B. (N.S.) 289  
Referred to. *HEWSON v. SHELLEY* - [1913] W. N. 246
- Provident Clothing and Supply Co. v. Mason*, [1913] 1 K. B. 65.  
Reversed, *sub nom. MASON v. PROVIDENT CLOTHING AND SUPPLY CO., LD.* - H. L. (E.) [1913] W. N. 257
- Pryse, In the Goods of* - - [1904] P. 301  
Referred to. *HEWSON v. SHELLEY* - [1913] W. N. 246
- Pugh v. Riley Cycle Co., Ltd.* - 30 R. P. C. 32  
Affirmed - C. A. 30 R. P. C. 514
- Pulman v. Meadows* - [1901] 1 Ch. 233  
Distinguished. *OLPHERTS v. CORYTON* - [1913] 1 I. R. 381
- Pulsford v. Devenish* - [1903] 2 Ch. 625, 633  
Applied. *WOODS v. WINSKILL* - [1913] W. N. 212
- Purser v. Purser* - - [1913] 1 I. R. 422  
Affirmed - C. A. (Ir.) [1913] 1 I. R. 428
- Quinton v. Frith* - - (1868) I. R. 2 Eq. 396  
Followed. *McMAHON v. HASTINGS* - [1913] 1 I. R. 395
- Ramsden & Carr v. J. Chessum & Ward*, (1912) 76 J. P. 171.  
Reversed - - C. A. 107 L. T. 746
- Rankine v. Alloa Coal Co.*, (1904) 6 Fraser, 375.  
Observations per Lord Kinneir at p. 1169 approved. *ELLIS v. FAIRFIELD SHIPBUILDING AND ENGINEERING CO.* - Ct. Sess. 1913 S. C. 217
- Ratcliffe v. Eans* - - [1892] 2 Q. B. 524  
Applied. *LEETHAM v. RANK* - C. A. 57 S. J. 111
- Rattenbury v. Munro* - (1910) 103 L. T. 560  
Referred to. *BALFOUR v. TILLET* - [1913] W. N. 70
- Redhill Gas Co. v. Reigate R. D. Co.*, [1911] 2 K. B. 565.  
Followed. *POSTMASTER-GENERAL v. HENDON U. D. C.* - [1913] 3 K. B. 451
- Reg. v. Buckmaster* - (1888) 20 Q. B. D. 182  
Approved. *REX v. HILLIARD (ALFRED)* - C. C. A. 9 Cr. App. R. 171
- Reg. v. Coll* - - (1889) 24 L. R. Ir. 522  
Followed. *REX v. BENJAMIN* - C. C. A. 8 Cr. App. R. 146
- Reg. v. Dennis* - - [1894] 2 Q. B. 458  
Followed. *REX v. PUCK & CO., LD.* - 11 L. G. R. 136
- Reg. v. Dring* - (1857) Dearsley & Bell, 329  
Referred to. *REX v. PRITCHARD (MOSES)* - C. C. A. [1913] W. N. 338
- Reg. v. Hopkins* - - [1893] 1 Q. B. 621  
Followed. *REX v. LEACH. Ex parte FRITCHLEY* Div. Ct. [1913] 3 K. B. 40
- Reg. v. Jackson* - - [1891] 1 Q. B. 671  
Referred to. *MACMAHON v. MACMAHON* - C. A. (Ir.) [1913] 1 I. R. 428
- Reg. v. Johnson* - - (1841) Car. & M. 218  
Distinguished. *REX v. CHANDLER* - [1913] 1 K. B. 125
- Reg. v. Rothwell* - (1871) 12 Cox, C. C. 145  
Distinguished. *REX v. BIRCHALL* - C. C. A. [1913] W. N. 260
- Reg. v. St. Pancras Vestry*, (1890) 24 Q. B. D. 371.  
Followed. *WEBSTER v. METROPOLITAN WATER BOARD* - 10 L. G. R. 1025
- Reg. v. Thomas* - - (1857) 7 E. & B. 393  
Doubted. *CABABE v. WALTON-UPON-THAMES U. D. C.* - H. L. (E.) [1913] W. N. 369

*Reg. v. Unkles* - - - I. R. 8 C. L. 57  
Referred to. IRISH INSURANCE COM-  
MISSIONERS v. HAMILTON  
Div. Ct. (Ir.) [1913] 2 I. R. 453

*Reg. v. Wimbledon Local Board*, (1882) 8 Q. B. D.  
459.  
Followed. SHAW v. TATI CONCES-  
SIONS, LD. - [1913] 1 Ch. 292

*Reith v. Governing Body of Westminster School*,  
[1913] 1 K. B. 190.  
Reversed on one point - C. A. [1913]  
3 K. B. 129

*Rea v. Adelaide Steamship Co.*, 15 C. L. R. 65  
Affirmed - P. C. 29 T. L. R. 743

*Rea v. Baggallay* - - [1913] 1 K. B. 305  
Referred to. IRISH INSURANCE COM-  
MISSIONERS v. HAMILTON  
Div. Ct. (Ir.) [1913] 2 I. R. 453

*Rea v. Bond* - - [1906] 2 K. B. 389  
Followed. REX v. RODLEY - C. C. A.  
9 Cr. App. R. 69

*Rea v. Connor* - (1913) 9 Cr. App. R. 131  
Referred to. REX v. SANDERS (CHARLES)  
C. C. A. 9 Cr. App. R. 179

*Rea v. Cork JJ.* - - [1912] 2 I. R. 151  
Considered. REX v. DAVISON  
Div. Ct. [1913] 2 I. R. 342

*Rea v. Daye* - - [1908] 2 K. B. 333  
Applied. FORBES v. SAMUEL  
[1913] 3 K. B. 706

*Rea v. Deaville* - - [1903] 1 K. B. 468  
Referred to. REX v. FISHER (DANIEL)  
C. C. A. 9 Cr. App. R. 164

*Rea v. Dinnick* - (1909) 3 Cr. App. R. 77  
Explained. REX v. TRUEMAN  
C. C. A. 9 Cr. App. R. 20

*Rea v. Easton, Ex parte Oulton*, [1912] 2 K. B.  
161.  
Affirmed - C. A. [1913] 2 K. B. 60

*Rea v. Edwards (Edward)*, (1909) 2 Cr. App. R.  
79.  
Followed. REX v. HARRISON (ARTHUR)  
C. C. A. 9 Cr. App. R. 143

*Rea v. Fisher* - (1909) 3 Cr. App. R. 176  
Followed. REX v. RODLEY  
C. C. A. 9 Cr. App. R. 69

*Rea v. Franklin* - (1909) 3 Cr. App. R. 48  
Followed. REX v. WESTWOOD  
(FREDERICK CHARLES)  
C. C. A. 8 Cr. App. R. 273

*Rea v. Harris* - (1910) 5 Cr. App. R. 285  
Distinguished. REX v. EDWARDS AND  
GILBERT - C. C. A. 8 Cr. App. R. 128

*Rea v. Hudson* - [1912] 2 K. B. 464  
Followed. REX v. WATSON  
C. C. A. 8 Cr. App. R. 249

*Rea v. Jefferson* - (1908) 1 Cr. App. R. 95  
Referred to. REX v. ALEXANDER  
(THOMAS) - 9 Cr. App. R. 139

*Rea v. Local Government Board*, [1911] 2 I. R.  
331.  
Observations in, approved and applied.  
REX v. LOCAL GOVERNMENT BOARD.  
Ex parte ARLIDGE - Div. Ct. [1913]  
1 K. B. 463

*Rea v. Local Government Board. Ex parte  
Arlidge*, [1913] 1 K. B. 463.  
Reversed - C. A. [1913] W. N. 282

*Rea (Christie) v. Londonderry JJ.*, [1912]  
2 I. R. 266.  
Followed. REX v. CORK JJ.  
Div. Ct. (Ir.) [1913] 2 I. R. 391

*Rea v. McLaren* - (1913) 9 Cr. App. R. 107  
Referred to. REX v. ALEXANDER  
(THOMAS) - 9 Cr. App. R. 139

*Rea v. Monmouthshire JJ.* - (1913) 108 L. T. 797  
Affirmed - C. A. 30 T. L. R. 26

*Rea v. Neal and Taylor* - (1835) 7 C. & P. 168  
Distinguished. REX v. CHARLES PAYNE  
C. C. A. [1913] W. N. 38

*Rea v. Norton* - - [1910] 2 K. B. 496  
Followed. REX v. CHRISTIE (ALBERT)  
C. C. A. 9 Cr. App. R. 169

*Rea v. Palmer* - - [1913] 2 K. B. 29  
Referred to. REX v. GREENING  
[1913] 3 K. B. 846  
REX v. ALEXANDER (THOMAS)  
9 Cr. App. R. 139

*Rea v. Roberts* - - (1913) 11 L. G. R. 235  
Reversed - C. A. [1913] W. N. 207

*Rea v. St. Luke's Hospital*, (1760) 2 Burr. 1053,  
at p. 1064.  
Dictum of Lord Mansfield in, considered.  
LIVERPOOL CORPORATION v. CHORLEY  
UNION ASSESSMENT COMMITTEE AND  
WITHELL OVERSEERS  
H. L. (E.) [1913] A. C. 197

*Rea v. Stoddard*, (1900) 2 Cr. App. R. 217, 245  
Followed. REX v. PAYNE - C. C. A.  
[1913] W. N. 38

*Reynolds v. Ashby* - - [1904] A. C. 466  
Distinguished. In re MORRISON,  
JONES & TAYLOR - 108 L. T. 675

*Rhoades, In re* - - [1883] 2 Q. B. 347  
Followed. OLPHERTS v. CORYTON  
[1913] 1 I. R. 381

*Richardson v. McCausland*, (1817) Beatty, 457  
Applied and followed. KELAGHAN v.  
DALY - [1913] 2 I. R. 328

*Richmond v. White* - (1879) 12 Ch. D. 367  
Followed. OLPHERTS v. CORYTON  
[1913] 1 I. R. 381

*Robb v. Green* - - [1895] 2 Q. B. 1, 315  
Followed. AMBER SIZE and CHEMI-  
CAL CO. v. MENZEL - [1913] 2 Ch. 239

*Roberts v. Gray* - - (1912) 28 T. L. R. 337  
Affirmed - C. A. 29 T. L. R. 149

*Roberts v. Walker* - (1830) 1 Russ. & My. 752  
Referred to. In re SMITH  
[1913] 2 Ch. 216

*Robinson (William) & Co., v. Hener*, [1898]  
2 Ch. 451.  
Referred to. CHAPMAN v. WESTERBY  
[1913] W. N. 277

- Rochester (Bishop) v. Le Famu*, [1906] 2 Ch. 513.  
Referred to. *ATT.-GEN. v. HOWLEY* [1913] 1 I. R. 455
- Roddy v. Fitzgerald*, (1858) 6 H. L. C. 823, 872, 877.  
Applied. *In re SIMCOE. VOWLER-SIMCOE v. VOWLER* - [1913] 1 Ch. 552
- Rodney v. Shambers* - (1802) 2 East, 283  
Commented on. *MACMAHON v. MACMAHON* - [1913] 1 I. R. 428
- Rodocanachi v. Milburn*, (1886) 18 Q. B. D. 67  
Followed. *In re WILLIAMS BROTHERS AND E. T. AGIUS, LD.* - C. A. 18 Com. Cas. 287
- Rolls v. St. George the Martyr, Southwark*, (1880) 14 Ch. D. 785.  
Referred to. *KERSHAW v. SMITH (ALFRED JOHN) & CO.* - [1913] 2 K. B. 455
- Ross v. Eason & Son, Ltd.* - [1911] 2 I. R. 459  
Distinguished. *COONEY v. WILSON AND HENDERSON* - C. A. (Ir.) [1913] 2 I. R. 402
- Rubens v. Pathé Frères Pathephone, Ltd.*, 29 T. L. R. 174.  
Reversed in part and affirmed in part C. A. [1913] W. N.
- Russell v. Russell* - [1895] P. 315  
The view expressed in, followed. *BROOKING-PHILLIPS v. BROOKING-PHILLIPS* - [1913] P. 80
- Russell v. Stubbs, Ltd.*, (1908) 52 S. J. 580, and [1913] 2 K. B. 200, n.  
Discussed and distinguished. *BARHAM v. LORD HUNTINGFIELD* [1913] 2 K. B. 198
- Ruthin and Cerrig-y-Druidion Railway Act, In re*, (1886) 32 Ch. D. 438.  
Followed. *In re WEST YORKSHIRE TRAMWAYS ACT, 1906* C. A. [1913] 1 Ch. 170
- Ryan v. Tipperary C. C.*, (1912) 46 Ir. L. T. R. 302.  
Distinguished. *O'DONNELL v. CLARE C. C.* - C. A. (Ir.) [1913] W. C. & Ins. Rep. 273
- Rylands v. Fletcher* - (1868) L. R. 3 H. L. 330  
Applied. *CHARING CROSS, WEST-END AND CITY ELECTRICITY SUPPLY CO. v. LONDON HYDRAULIC POWER CO.* [1913] 3 K. B. 442  
Distinguished. *RICKARDS v. LOTHIAN P. C.* [1913] A. C. 263
- Sadgrove v. Kirby* - (1795) 6 T. R. 483  
The principle of, applied. *HOPE v. OSBORNE* - [1913] 2 Ch. 349
- Sadler v. Evans* - (1766) 4 Burr. 1984  
Considered. *BAYLIS v. LONDON (BISHOP)* - [1913] 1 Ch. 127
- Sadler v. Great Western Ry. Co.*, [1896] A. C. 450.  
Applied. *MUNDAY v. SOUTH METROPOLITAN ELECTRIC LIGHT CO. AND NEW GUTTA PERCHA CO.* [1913] W. N. 90
- Sadler v. Pratt* - (1833) 5 Sim. 632  
Applied. *In re WITTY. WRIGHT v. ROBINSON* - [1913] 2 Ch. 666
- "St. Cloud," The* - (1863) Br. & Lush. 4  
Followed. *THE "CAP BLANCO"* [1913] P. 130
- Salt v. Cooper* - (1880) 16 Ch. D. 544  
Distinguished. *In re HEARN. DE BERNADINO v. HEARN* [1913] W. N. 81
- Salts v. Battersby* - [1910] 2 K. B. 155  
Referred to. *MITCHELL v. MOSLEY* [1913] W. N. 43
- Salisbury v. Denton* - (1857) 3 K. & J. 529  
Applied. *In re GAVAN. O'MEARA v. ATT.-GEN.* - [1913] 1 I. R. 276
- Samson, In re* - [1906] 2 Ch. 584  
Applied. *OLPHERTS v. CORYTON* [1913] 1 I. R. 211
- Santen v. Busnach* - (1912) 28 T. L. R. 515  
Reversed - C. A. 29 T. L. R. 214
- Sartoris' Estate, In re* - [1892] 1 Ch. 11  
Explained and followed. *In re LAYE. TURNBULL v. LAYE* - [1913] 1 Ch. 298
- Schulze v. Tod* - [1912] S. C. 50  
Affirmed *H. L. (Se.)* [1913] A. C. 213
- Schweppes, Ltd., In re* - [1913] W. N. 340  
Reversed. - C. A. [1913] W. N. 371
- Scott v. Carritt* - (1900) 82 L. T. 67  
Referred to. *CLODE v. LONDON C. C. Div. Ct.* 11 L. G. R. 410
- Scott v. Scott* - [1912] P. 241  
Reversed - *H. L. (E.)* [1913] A. C. 417
- Scott v. Scott* - [1913] A. C. 417  
Distinguished. *MOOSBRUGGER v. MOOSBRUGGER* - 29 T. L. R. 658
- Seaver v. Seaver*, (1846) 2 Sw. & Tr. 665 (Appendix II).  
Overruled. *BROOKING-PHILLIPS v. BROOKING-PHILLIPS* - [1913] P. 80
- Seaward v. Paterson* - [1897] 1 Ch. 545  
Followed. *HUBBARD v. WOODFIELD* 57 S. J. 729
- Shafto v. Bolekov, Vaughan & Co.*, (1887) 34 Ch. D. 725, 728.  
Applied. *THORNHILL v. WEEKS* [1913] 1 Ch. 438
- Sharples v. Eason* - [1911] 2 I. R. 436  
Distinguished. *COONEY v. WILSON AND HENDERSON* - C. A. (Ir.) [1913] 2 I. R. 402
- Shaw v. Smith* - (1886) 18 Q. B. D. 193  
Applied. *BIRCHAL v. BIRCH, CRISP & CO.* - [1913] 2 Ch. 375
- Shelley's Case* - (1581) 1 Rep. 93b  
Rule in, not applied. *In re DAVISON'S SETTLEMENT. CATERMOLE DAVISON v. MUNBY* [1913] 2 Ch. 498
- Sheridan v. O'Reilly* - [1900] 1 I. R. 386  
Distinguished - [1913] 1 I. R. 143
- Sherlock's Estate, In re* - [1899] 2 I. R. 561, 591  
Considered. *In re STEELE'S ESTATE* C. A. (Ir.) [1913] 1 I. R. 292



*Shoreditch (Vestry of St. Leonard) v. Phelan*,  
[1896] 1 Q. B. 533.  
Distinguished. *KERSHAW v. SMITH*  
(ALFRED JOHN) & Co.  
[1913] 2 K. B. 455

*Sibley v. Perry* - - - (1802) 7 W. 522  
Distinguished. *In re EMBURY*. PAGE  
v. BOWYER - - - 109 L. T. 511

*Singleton v. Ellison* - - [1895] 1 Q. B. 607  
Followed. CALDWELL v. LEECH  
Div. Ct. 77 J. P. 254

*Sion College v. London Corporation*, [1901] 1  
K. B. 617.  
Referred to. ASSOCIATED NEWSPAPERS,  
LD. v. CITY OF LONDON CORPORA-  
TION - Div. Ct. [1913] 2 K. B. 281

*Smeed, Dean & Co. v. Port of London Authority*,  
[1912] 2 K. B. 585.  
Affirmed - C. A. [1913] 1 K. B. 226

*Smelting Co. of Australia v. Inland Revenue*  
*Commrs.*, [1897] 1 Q. B. 175.  
Referred to. URBAN v. INLAND  
REVENUE COMMRS. C. A. 29 T. L. R. 141

*Smith, In re* - - - (1888) 40 Ch. D. 386  
Referred to. *In re PIGGINS*. *Ex parte*  
MANSFIELD RY. CO. [1913] W. N. 198

*Smith v. Lucas* - (1881) 18 Ch. D. 531, 543  
Principles stated in, applied. PULLAN  
v. KOE - - - [1913] 1 Ch. 9

*Smithies v. Bridge* - - [1902] 2 K. B. 13  
Commented on. SCOTT v. JACK  
Ct. Just. (Sc.) 1912 S. C. (J.) 87

*Smurthwaite v. Hannay* - [1894] A. C. 494  
Dictum of Lord Russell of Killowen in,  
considered. SANDEMAN & SONS v.  
TYZACK AND BRANFOOT STEAMSHIP  
CO., LD. - - - [1913] A. C. 680

*Solomon, In re, Nore v. Meyer*, [1912] 1 Ch.  
261.  
Compromised on appeal - C. A.  
[1913] 1 Ch. 200

*Solomon v. Attenborough* - [1912] 1 Ch. 451  
Affirmed, *sub nom.* GEORGE ATTEN-  
BOROUGH & SON v. SOLOMON  
[1913] A. C. 76  
Referred to. HEWSON v. SHELLEY  
[1913] W. N. 246

*Southport Corporation v. Morris*, [1893] 1 Q. B.  
359.  
Distinguished. WEEKS v. ROSS  
Div. Ct. [1913] 2 K. B. 229

*Southwark and Vauxhall Water Co. v. Quick*,  
(1878) 3 Q. B. D. 315.  
Followed. BIRMINGHAM AND MID-  
LAND MOTOR OMNIBUS CO. v. LONDON  
AND NORTH WESTERN RY. CO.  
C. A. 57 S. J. 752

*Spackman v. Evans*, (1868) L. R. 3 H. L. 171,  
236.  
Referred to. *In re REPUBLIC OF*  
*BOLIVIA EXPLORATION SYNDICATE*,  
LD. - - - [1913] W. N. 358

*Spence v. Union Marine Insurance Co.*, (1868)  
L. R. 3 C. P. 427.  
Distinguished. SANDEMAN & SONS  
v. TYZACK AND BRANFOOT STEAM-  
SHIP CO., LD. - [1913] A. C. 680

*Spickernell v. Hotham* - (1854) Kay, 669, 675  
Distinguished. PULLAN v. KOE  
[1913] 1 Ch. 9

*Spiers v. Elderslie Steamship Co.*, 1909 S. C.  
1259.  
Followed. LUCKWILL v. ASCHER  
STEAM SHIPPING CO.  
C. A. [1912] W. C. & Ins. Rep. 167

*Stanley, In re* - - (1886) 17 L. R. Ir. 487  
Overruled. HOLLINSHEAD v. P. AND  
H. EGAN, LD. - [1913] A. C. 564

*Stanley Bros. v. Nuneaton Corporation*, (1912)  
11 L. G. R. 397.  
Reversed - C. A. 108 L. T. 986

*Stark v. Stark* - - - [1910] P. 190  
Distinguished. CLARKE v. CLARKE &  
LINDSAY - - C. A. 57 S. J. 644

*Stathatos v. Stathatos* - - [1910] P. 46  
Approved. DE MONTAIGU v. DE  
MONTAIGU - - - [1913] P. 154

*Steel v. State Line Steamship Co.*, (1877) 3  
App. Cas. 72.  
Referred to. INGRAM & ROYLE, LD. v.  
SERVICES MARITIMES DU TRÉPORT  
[1913] W. N. 45

*Stephens, In re, Warburton v. Stephens*, (1889)  
43 Ch. D. 39.  
Query raised by Kay J. at p. 45,  
answered in the negative.  
*In re RAGGI*. BRASS v. H. YOUNG &  
Co. - - - [1913] 2 Ch. 206

*Stickney v. Keeble* - - (1913) 57 S. J. 212  
Reversed - C. A. 57 S. J. 389

*Stimpson v. Emmerson* - (1847) 9 L. T. (O.S.) 199  
Followed. *In re KING AND DUVEEN*  
[1913] 2 K. B. 32

*Stock v. Meakin* - - - [1900] 1 Ch. 633  
Distinguished. *In re FARRER AND*  
*GILBERT'S CONTRACT*  
[1913] W. N. 298

*Stockdale v. Ascherberg* - [1904] 1 K. B. 447  
Distinguished. HOWE v. BOTWOOD  
[1913] 2 K. B. 387

*Stokes v. Wilson* - - [1913] 2 K. B. 235  
Followed. R. LESLIE, LD. v. SHIELL  
29 T. L. R. 554

*Stokes v. Clendon* - (1790) 3 Swans. 150, n.  
Followed. GEE v. LIDDELL  
[1913] 2 Ch. 62

*Stokes v. Stokes* - - - [1911] P. 195  
Affirmed. BLACKLEDGE v. BLACK-  
LEDGE - - Div. Ct. [1913] P. 9

*Stringer's Estate, In re* - (1877) 6 Ch. D. 1  
Considered and applied. *In re TEN-*  
*NENT'S ESTATE* - [1913] 1 I. R. 280

*Strong v. Bird* - - (1874) L. R. 18 Eq. 315  
Referred to. *In re PINK*. PINK v.  
PINK - - C. A. [1912] 2 Ch. 258

- Summerlee Iron Co., Ltd. v. Freeland*, 1912 S. C. 1145.  
Affirmed - - - [1913] A. C. 221
- Swansea Corporation v. Harpur*, [1912] 3 K. B. 349.  
Affirmed *sub nom.* HARPUR *v.* SWANSEA CORPORATION - - H. L. (E.).  
[1913] A. C. 597
- Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority*, [1892] 1 Q. B. 357.  
Followed. TOTTENHAM URBAN DISTRICT COUNCIL *v.* METROPOLITAN ELECTRIC TRAMWAYS, LD.  
[1913] A. C. 702
- Sykes v. Sowerby Urban Council*, [1900] 1 Q. B. 584.  
Followed. PHILLIMORE *v.* WATFORD RURAL DISTRICT COUNCIL  
[1913] 2 Ch. 434
- Taaffe v. Taaffe* - - - [1902] 1 I. R. 148  
Ratio decidendi of, applied. OLPHERTS *v.* DOBYTON - - [1913] 1 I. R. 381
- Tailors (Glasgow Incorporation of)*, (1887) 14 R. 729.  
Distinguished. MASONS OF SCOTLAND (GRAND LODGE) *v.* INLAND REVENUE COMMRs. - Ct. Sess. 6 T. C. 116
- Tanner v. Smart* - - - (1827) 6 B. & C. 603  
Distinguished. BROWN *v.* MACKENZIE  
[1913] W. N. 75
- Taylor, Ex parte* - - - (1820) 1 Jac. & W. 483  
Applied. *In re* WOODWARD. KENWAY *v.* KIDD - - - [1913] 1 Ch. 392
- Taylor v. Best* - - - (1854) 14 C. B. 487  
Distinguished. *In re* REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LD. - Div. Ct. [1913] W. N. 329
- Taylor's Trusts, In re, Matheson v. Taylor*, [1905] 1 Ch. 734.  
Followed and applied. *In re* SALE. NISBET *v.* PHILP - [1913] 2 Ch. 697
- Te Teira Te Paea v. Te Roera Tareha*, [1902] A. C. 56.  
Distinguished. MANU KAPUA *v.* PARA HAEMONA - - - [1913] A. C. 761
- Teasdale's Case, In re, County Palatine Loan and Discount Co., In re*, (1873) L. R. 9 Ch. 54.  
Followed. ROWELL *v.* JOHN ROWELL & SON, LD. - [1912] 2 Ch. 609
- Teofani & Co.'s Trade Mark, In re*, [1913] 1 Ch. 191.  
Reversed on one point and affirmed on another - - C. A. [1913] 2 Ch. 545
- Teuliere v. St. Mary Abbots, Kensington*, (1885) 30 Ch. D. 642.  
Referred to. DAVIES *v.* LONDON CORPORATION - - [1913] W. N. 73
- Tewart v. Lawson* - - (1874) L. R. 18 Eq. 490  
Followed. *In re* CRESSWELL  
[1913] W. N. 177
- Thatcher's Trusts, In re* - (1884) 26 Ch. D. 426  
Followed. *In re* COOPER. COOPER *v.* COOPER - - - [1913] 1 Ch. 350
- Thomas v. Daw* - - - (1866) L. R. 2 Ch. 1  
Referred to. DAVIES *v.* LONDON CORPORATION - - [1913] W. N. 73
- Thomas v. Devonport Corporation*, [1900] 1 Q. B. 16, 21.  
Referred to. *In re* BOLIVIA (REPUBLIC OF) EXPLORATION SYNDICATE, LD.  
[1913] W. N. 358
- Thorne & Co. v. Sundow*, (1912) 29 R. P. C. 440  
Observations of Neville J. in, adopted. TEOFANI & CO., LD. *v.* A. TEOFANI  
C. A. 30 R. P. C. 446
- Thornhill v. Weeks* - - - [1913] W. N. 201  
Affirmed - - C. A. [1913] 2 Ch. 464
- Thornhill v. Weeks* - - [1913] 1 Ch. 438  
See THORNHILL *v.* WEEKS (No. 2)  
[1913] 2 Ch. 464
- Tottenham Local Board v. Rowell*, (1876) 1 Ex. D. 514.  
Distinguished. METROPOLITAN WATER BOARD *v.* BUNN - - C. A. [1913] 3 K. B. 181
- Tottenham U. D. C. v. Metropolitan Electric Tramways, Ltd.*, [1912] 2 K. B. 216.  
Reversed - - [1913] A. C. 702
- Trenchard, In re, Trenchard v. Trenchard*, [1902] 1 Ch. 378.  
Observations of Buckley J. followed. *In re* SIMPSON. CLARKE *v.* SIMPSON  
[1913] 1 Ch. 277
- Trenchard, In re, Ward v. Trenchard*, (1900) 16 T. L. R. 525.  
Not followed. *In re* SIMPSON. CLARKE *v.* SIMPSON - - - [1913] 1 Ch. 277
- Trevor v. Whitworth* - (1887) 12 App. Cas. 409  
Applied. *In re* COMPANIES (CONSOLIDATION) ACT, 1908, AND THE IRISH PROVIDENT ASSURANCE CO., LD., AND JOHANNA BRADLEY - - C. A. (Ir.)  
[1913] 1 I. R. 352
- Trew v. Perpetual Trustee Co.*, [1895] A. C. 264  
Distinguished. *In re* BEAUMONT. BRADSHAW *v.* PACKER  
[1913] 1 Ch. 325
- Truman, Hanbury, Buxton & Co. v. Inland Revenue Commrs.*, [1912] 3 K. B. 377.  
Affirmed on the first point and reversed on the second point *sub nom.* INLAND REVENUE COMMRs. *v.* TRUMAN, HANBURY, BUXTON & CO. - H. L. (E.).  
[1913] A. C. 650
- Tuck & Sons v. Priester* - (1887) 19 Q. B. D. 629  
Followed. AMBER SIZE AND CHEMICAL CO., LD. *v.* MENZEL - [1913] 2 Ch. 239
- Turner v. Evans*, (1852) 2 El. & Bl. 512; 2 De G. M. & G. 740.  
Considered and applied. DAYER-SMITH *v.* HADSLEY - C. A. 108 L. T. 897
- Turner v. Moon* - - - [1901] 2 Ch. 825  
Followed. EASTWOOD *v.* ASHTON  
[1913] 2 Ch. 39

*Turner v. Wright* - (1860) 2 D. F. & J. 234  
Followed. *In re HANBURY'S SETTLED ESTATES* - [1913] 2 Ch. 357

*Turton v. Turton* - (1889) 42 Ch. D. 128  
Distinguished. *TEOFANI & Co., LD. v. A. TEOFANI* - C. A. 30 R. P. C. 446

Followed. *BRINSMEAD (JOHN) v. BRINSMEAD* - 30 R. P. C. 137

*Tweddle (John) & Co., Ltd., In re*, [1910] 2 K. B. 697.  
Referred to. *In re ARTHUR WILLIAMS & Co. Ex parte THE OFFICIAL RECEIVER* - [1913] 2 K. B. 88

*Tyzack and Branfoot Steamship Co., Ltd. v. Sandeman & Sons*, 1913 S. C. 19.  
Reversed *sub nom. SANDEMAN & SONS v. TYZACK and BRANFOOT STEAMSHIP Co., LD.* - H. L. (SC.) [1913] A. C. 680

*Union Bank of Kingston-upon-Hull, In re*, (1880) 13 Ch. D. 808, 810.  
Dictum of Jessel M.R. in, followed. *In re DEMERARA RUBBER Co., LD.* [1913] 1 Ch. 331

*United Horse Shoe and Nail Co. v. Stewart & Co.*, (1888) 5 R. P. C. 260.  
Considered and followed. *WATSON, LAIDLAW & Co., LD. v. POTT, CASSELS & WILLIAMSON* Ct. Sess. 30 R. P. C. 285

*United Land Co. v. Great Eastern Ry. Co.* (1875) L. R. 10 Ch. 586.  
Followed. *WHITE v. GRAND HOTEL, EASTBOURNE, LD.* - C. A. [1913] 1 Ch. 113

*Unity Joint Stock Mutual Banking Association, Ex parte, In re King*, (1858) 3 De G. & J. 63.  
Followed. *STOCKS v. WILSON* [1913] 2 K. B. 235

*Vacher & Sons, Ltd. v. London Society of Compositors*, [1912] 3 K. B. 547.  
Affirmed - H. L. (E.) [1913] A. C. 107

*Van Grutten v. Formwell*, [1897] A. C. 658, 672, 684.  
Applied. *In re SIMCOE. VOWLER-SIMCOE v. VOWLER* - [1913] 1 Ch. 552

*Vandergucht v. De Blaquiére*, (1839) 5 Myl. & Cr. 229.  
Referred to. *MACMAHON v. MACMAHON* C. A. (Ir.) [1913] 1 I. R. 428

"*Velocity*," *The* - (1869) L. R. 3 P. C. 44  
Referred to. *THE "OLYMPIC" AND H.M.S. "HAWKE"* C. A. [1913] P. 214

*Veterinary Surgeons (Royal College of) v. Collinson*, [1908] 2 K. B. 248.  
Distinguished. *VETERINARY SURGEONS (ROYAL COLLEGE OF) v. KENNARD* - [1913] W. N. 286

*Vic Mill, Ltd., In re* - [1913] 1 Ch. 183  
Affirmed - C. A. [1913] 1 Ch. 465

*Victoria Steamboats, Ltd., In re*, [1897] 1 Ch. 158  
Distinguished. *In re NEW YORK TAXI-CAB Co. SEQUIN v. THE Co.* [1913] 1 Ch. 1

*Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co.*, [1912] 1 K. B. 229.

Appeal withdrawn on terms agreed upon between the parties - [1913] A. C. 52

Distinguished. *INGRAM & ROYLE, LD. v. SERVICES MARITIMES DU TRÉPORT* - [1913] W. N. 326

*Wakefield and District Light Ry. Co. v. Wakefield Corporation*, [1908] A. C. 293.  
Distinguished. *TOTTENHAM U. D. C. v. METROPOLITAN ELECTRIC TRAMWAYS, LD.* - H. L. (E.) [1913] A. C. 702

*Wakelin v. London and South Western Ry. Co.*, (1886) 12 App. Cas. 41.  
Rule laid down by Lord Halsbury L.C. in, applied. *MCKENZIE v. CHILLIWACK CORPORATION* - 82 L. J. (P. C.) 22

*Walbran, In re, Milner v. Walbran*, [1906] 1 Ch. 64.  
Distinguished. *In re HARPER* [1913] W. N. 297

*Wallace v. Greenwood*, (1880) 16 Ch. D. 362, 365, 366.  
Dicta of Jessel M.R. in, not followed. *HOPKINSON v. RICHARDSON* [1913] 1 Ch. 284

*Waller v. Loch* - (1881) 7 Q. B. D. 619  
Distinguished. *GREENLANDS, LD. v. WILMSHURST and THE LONDON ASSOCIATION FOR PROTECTION OF TRADE* [1913] 3 K. B. 507

*Walter v. Selfe* - (1851) 4 De G. & Sm. 315  
Referred to. *ADAMS v. URSELL* [1913] 1 Ch. 269

*Walter & Gould v. King* - (1897) 13 T. L. R. 270  
Followed. *In re FINLAY. C. S. WILSON & Co. v. FINLAY* C. A. [1913] 1 Ch. 565

*Ward v. Dyas*, (1835) 1 L. & G. temp. Sugden, 177.  
Distinguished. *In re DONELLY'S ESTATE* C. A. (Ir.) [1913] 1 I. R. 177

*Watkins, In re, Maybery v. Lightfoot*, [1912] 2 Ch. 430.  
Affirmed - C. A. [1913] 1 Ch. 376

*Watson, In re, Ex parte Schipper*, (1912) 107 L. T. 96.  
Affirmed - C. A. 107 L. T. 783

*Watts v. Cresswell* - (1714) 9 Vin. Abr. 415  
Followed. *STOCKS v. WILSON* [1913] 2 K. B. 265

*Way, In re*, (1861) 30 L. J. (Ch.) 815; 3 D. F. & J. 175.  
Followed. *In re BENNETT. GREENWOOD v. BENNETT* - [1913] 2 Ch. 318

- Wedmore, In re, Wedmore v. Wedmore*, [1907] 2 Ch. 277.  
Referred to. *In re WHITEHEAD. WHITEHEAD v. STREET* [1913] 2 Ch. 56  
*MITCHELL v. MOSLEY* [1913] W. N. 43
- Weir v. Bell* - (1878) 3 Ex. D. 238, at p. 243  
Principle laid down by Bramwell B. in, applied. *MAIR v. RIO GRANDE RUBBER ESTATES, LD.* - - - H. L. (Sc.) [1913] A. C. 858
- Weir v. Fermanagh C. C. and Enniskillen R. D. C.*, [1913] 1 I. R. 63.  
Affirmed in part and reversed in part C. A. (Ir.) [1913] 1 I. R. 193
- Wertheim v. Olvicoutini Pulp Co.*, [1911] A. C. 301.  
Referred to. *In re WILLIAMS BROTHERS & E. T. AGIUS, LD.* - - - C. A. 18 Com. Cas. 287
- West Ham Churchwardens v. Fourth City Mutual Building Society*, [1892] 1 Q. B. 654.  
Distinguished. *REX v. ROBERTS C. A.* [1913] W. N. 207
- West Ham Local Board v. Maddams*, (1876) 1 Ex. D. 516, n.  
Not followed. *METROPOLITAN WATER BOARD v. BUNN* - [1913] 1 K. B. 134
- Western v. Kensington Assessment Committee*, [1908] 1 K. B. 811.  
Applicable. *CONSOLIDATED LONDON PROPERTIES, LD. v. ST. MARYLEBONE ASSESSMENT COMMITTEE* - [1913] 3 K. B. 230
- Westmeath (Marquess of) v. Salisbury (Marquess of)*, (1831) 5 Bli. (N.S.) 339.  
Considered. *MACMAHON v. MACMAHON C. A. (Ir.)* [1913] 1 I. R. 428
- Wheeler, Ridley & Co. v. Dawson*, [1913] W. C. & Ins. Rep. 59.  
Followed. *SIMPSON v. BYRNE C. A. (Ir.)* [1913] W. C. & Ins. Rep. 240
- White v. Grand Hotel, Eastbourne*, (1912) 106 L. T. 785; [1913] 1 Ch. 113.  
Affirmed with partial variation, *sub nom. GRAND HOTEL, EASTBOURNE v. WHITE H. L. (E.)* [1913] W. N. 306
- White v. Steadman & Sons* - [1913] W. N. 172  
Distinguished. *BATES v. BATEY & Co., LD.* - - - [1913] 3 K. B. 351
- Whitham v. Kershaw*, (1885) 16 Q. B. D. 613, 616.  
Dictum of Lord Esher M.R. in, dis-sented from. *DEFRIES v. MILNE* [1913] 1 Ch. 98
- Whittuck v. Waters*, (1830) 4 C. & P. 375.  
Applied. *In re WOODWARD. KENWAY v. KIDD* - - - [1913] 1 Ch. 392
- Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416.  
Referred to. *CHAPMAN v. WESTERBY* [1913] W. N. 277
- Wilkinson v. Peel* - - - [1895] 1 Q. B. 516  
Distinguished. *LEWIS v. DAVIES Div. Ct.* [1913] 2 K. B. 37
- Will v. United Lankat Plantations Co., Ltd.*, [1912] 2 Ch. 571.  
Affirmed *H. L. (E.)* [1913] W. N. 294  
Applied. *In re NATIONAL TELEPHONE Co., LD.* - - - 109 L. T. 389
- Williams v. Allsup* - (1861) 10 C. B. (N.S.) 417  
Followed and applied. *JOWITT & SONS v. UNION COLD STORAGE Co.* - [1913] 3 K. B. 1
- Wilson v. Cornwell* - (1883) 23 Ch. D. 764  
Not followed. *OLPHERTS v. CORYTON* [1913] 1 I. R. 211
- Wilson v. Playle* - - (1903) 1 L. G. R. 870  
Followed. *PLOWRIGHT v. BURRELL Div. Ct.* [1913] 2 K. B. 362
- Wilson v. Wilson* - (1848) 1 H. L. C. 538  
Referred to. *MACMAHON v. MACMAHON - C. A. (Ir.)* [1913] 1 I. R. 428
- Wimble v. Rosenberg* - [1913] 1 K. B. 279  
Affirmed - *C. A.* [1913] 3 K. B. 743
- Windham v. Graham* - (1826) 1 Russ. 331  
Followed. *In re WISE'S SETTLEMENT. SMITH v. WALLER* - [1913] 1 Ch. 41
- Wise, In re* - [1896] 1 Ch. 281; 73 L. T. 743  
Explained. *In re COOPER. COOPER v. COOPER* - - - [1913] 1 Ch. 350
- Woking U. D. C. (Basingstoke Canal) Act*, 1911, *In re*, 77 J. P. 481.  
Reversed - *C. A.* [1913] W. N. 346
- Wood v. Leadbitter* - (1843) 13 M. & W. 838  
Distinguished. *HURST v. PICTURE THEATRES, LD.* - - - 30 T. L. R. 98
- Wood (Marke), In re, Wodehouse v. Wood*, [1913] 1 Ch. 303.  
Affirmed - *C. A.* [1913] 2 Ch. 514
- Wolverhampton and Walsall Ry. Co. v. London and North Western Ry. Co.*, (1873) L. R. 16 Eq. 433.  
Referred to. *LONDON ELECTRIC SUPPLY CORPORATION, LD. v. WESTMINSTER ELECTRIC SUPPLY CORPORATION, LD.* - *H. L. (E.)* 11 L. G. R. 1046
- Wolverhampton Corporation v. Enmons*, (1901) 1 Q. B. 515  
Referred to. *LONDON ELECTRIC SUPPLY CORPORATION, LD. v. WESTMINSTER ELECTRIC SUPPLY CORPORATION, LD.* *H. L. (E.)* 11 L. G. R. 1046
- Wootton v. Sievier* - - - 29 T. L. R. 724  
Reversed - *C. A.* 30 T. L. R. 165
- Wormald, In re, Frank v. Muzeen*, (1890) 43 Ch. D. 630.  
Followed. *In re ADAMSON. PUBLIC TRUSTEE v. BILLING* [1913] W. N. 18
- Wright, In the Goods of* - - [1893] P. 21  
Referred to. *HEWSON v. SHELLEY* [1913] W. N. 246
- Wright v. Rogers* - (1869) 1 P. & D. 67  
Distinguished. *GOODISSON v. GOODISSON* - - - [1913] 1 I. R. 31
- Wylie Hill v. Inland Revenue Commrs.*, 1912 S. C. 1246.  
Followed. *BROOKS v. INLAND REVENUE COMMRS.* [1913] 3 K. B. 398
- Zierenberg v. Labouchere* - [1893] 2 Q. B. 133  
Followed. *WOOTTON v. SIEVIER C. A.* [1913] W. N. 187



# STATUTES.

## STATUTES ENACTED DURING THE YEAR 1912.

SESSION 1912—2 GEO. 5.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
1	<i>Consolidated Fund (No. 1) Act</i> , 1912 (2 Geo. 5, c. 1), is an Act for the application of certain sums out of the Consolidated Fund to the service of the years 1912 and 1913 . . .	March 28 .	Not specified.
2	<i>Coal Mines (Minimum Wage) Act</i> , 1912 (2 Geo. 5, c. 2), is an Act to provide for a minimum wage for workmen employed underground in coal mines . . .	March 29 .	Not specified.
3	<i>Shops Act</i> , 1912 (2 Geo. 5, c. 3), is an Act to consolidate the Shops Regulation Acts, 1892 to 1911 . . .	March 29 .	May 1, 1912.
4	<i>Metropolitan Police Act</i> , 1912 (2 Geo. 5, c. 4), is an Act to raise the maximum rate in the pound for the expenses of the Metropolitan Police from 9 <i>d.</i> to 11 <i>d.</i> . . .	March 29 .	Not specified.
5	<i>Army (Annual) Act</i> , 1912, is an Act to provide during twelve months for the discipline and regulation of the Army . . .	April 30 .	Not specified.
6	<i>Government of India Act</i> , 1912, is an Act to make such amendments in the law relating to the Government of India as are consequential on the appointment of a separate Governor of Fort William in Bengal . . .	June 25 .	On such day as the Governor-General in Council with the approval of the Secretary of State in Council may appoint.
7	<i>Appropriation Act</i> , 1912 (2 & 3 Geo. 5, c. 7), is an Act to apply a sum out of the Consolidated Fund to the service of the year ending on March 31, 1913, and to appropriate the supplies granted in this session of Parliament . . .	August 7 .	Not specified.
8	<i>Finance Act</i> , 1912 (2 & 3 Geo. 5, c. 8), is an Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the laws relating to Customs and Inland Revenue and the National Debt and to make other provisions for the financial arrangements of the year . . .	August 7 .	Not specified.

NOTE.—An Act comes into operation from the commencement of the day on which it receives the Royal Assent unless otherwise specified, except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain the actual priority : *Tomlinson v. Bullock* (1879) 4 Q. B. D. 230.

Where an Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day : *Interpretation Act*, 1889 (52 & 53 Vict. c. 63), s. 36 (2).

## STATUTES ENACTED DURING THE YEAR 1913.

SESSION 1913—3 GEO. 5.

Chap.	TITLE.	Date of Royal Assent.	When Act to cor Operation
1	<i>Consolidated Fund (No. 1) Act, 1913</i> , is an Act for the application of a sum out of the Consolidated Fund for the service of the year ending March 31, 1914 . . . . .	March 28 .	Not specified.
2	<i>Army (Annual) Act, 1913</i> , is an Act to provide during twelve months for the discipline and regulation of the Army . . . . .	April 25 .	Not specified.
3	<i>Provisional Collection of Taxes Act, 1913</i> , is an Act to give statutory effect for a limited period to resolutions varying or renewing taxation, and to make provision with respect to payments and deductions made on account of any temporary tax between the dates of the expiration and renewal of the tax . . . . .	April 25 .	Not specified.
4	<i>Prisoners (Temporary Discharge for Ill-health) Act, 1913</i> , is an Act for the temporary discharge of prisoners whose further detention in prison is undesirable on account of the condition of their health . . . . .	April 25 .	Not specified.
5	<i>Consolidated Fund (No. 2) Act, 1913</i> , is an Act for the application of a sum out of the Consolidated Fund for the service of the year ending March 31, 1914 . . . . .	July 4 .	Not specified.

SESSION 1913—3 &amp; 4 GEO. 5.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
6	<i>Extension of Polling Hours Act, 1913</i> , is an Act to extend the hours of polling at Parliamentary elections . . . . .	August 15 .	Not specified.
7	<i>Children (Employment Abroad) Act, 1913</i> , is an Act to prohibit and restrict children and young persons being taken out of the United Kingdom with a view to singing, playing, performing, or being exhibited for profit . . . . .	August 15 .	One month from passing.
8	<i>Crown Lands Act, 1913</i> , is an Act to authorise the execution of instruments on behalf of the Commissioners of Woods . . . . .	August 15 .	Not specified.
9	<i>Herring Fishery (Branding) Act, 1913</i> , is an Act to provide for the branding of barrels filled with cured herrings in England and Wales . . . . .	August 15 .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
10	<i>Government of the Soudan Loan Act</i> , 1913, is an Act to authorise the Treasury to guarantee the payment of interest on a loan to be raised by the Government of the Soudan . . .	August 15	Not specified.
11	<i>Post Office Act</i> , 1913, is an act to enable newspapers published in British Possessions or Protectorates to be registered and treated as registered newspapers under the Post Office Act, 1908 . . .	August 15	Not specified.
12	<i>Education (Scotland) Act</i> , 1913, is an Act to enable the provision of medical treatment for children attending schools in Scotland . . .	August 15	Not specified.
13	<i>Education (Scotland) (Glasgow Electoral Divisions) Act</i> , 1913, is an Act to divide the district of the School Board of Glasgow for electoral purposes . . .	August 15	Not specified.
14	<i>Public Buildings Expenses Act</i> , 1913, is an Act to amend s. 9 of the Finance Act, 1908 . . .	August 15	Not specified.
15	<i>Expiring Laws Continuance Act</i> , 1913, is an Act to continue various expiring laws . . .	August 15	Not specified.
16	<i>Foreign Jurisdiction Act</i> , 1913, is an Act to amend the Foreign Jurisdiction Act, 1890 . . .	August 15	Not specified.
17	<i>Fabrics (Misdescription) Act</i> , 1913, is an Act to prevent the misdescription of fabrics . . .	August 15	January 1, 1914.
18	<i>Isle of Man (Customs) Act</i> , 1913, is an Act to amend the law with respect to Customs in the Isle of Man . . .	August 15	Not specified.
19	<i>Local Government (Adjustments) Act</i> , 1913, is an Act to amend the law relating to the adjustment of financial relations between Local Government areas on the alteration of the boundaries thereof or other changes in relation to which the adjustment takes place . . .	August 15	Not specified.
20	<i>Bankruptcy (Scotland) Act</i> , 1913, is an Act to consolidate and annul the law relating to bankruptcy in Scotland . . .	August 15	January 1, 1914.
21	<i>Appellate Jurisdiction Act</i> , 1913, is an Act to make further provision with respect to the number and duties of Lords of Appeal in Ordinary and with respect to the constitution of the Court of Appeal and the Judicial Committee of the Privy Council . . .	August 15	Not specified.
22	<i>Public Works Loans Act</i> , 1913, is an Act to grant money for the purpose of certain local loans out of the Local Loans Fund, and for other purposes relating to local loans . . .	August 15	Not specified.
23	<i>Public Health (Prevention and Treatment of Disease) Act</i> , 1913, is an Act to amend the law relating to Public Health as respects the prevention and treatment of disease . . .	August 15	Not specified.
24	<i>Telegraph (Money) Act</i> , 1913, is an Act to provide for raising further money for the purpose of the Telegraph Acts, 1863 to 1911. . .	August 15	Not specified.
25	<i>Companies Act</i> , 1913, is an Act to amend the provisions of the Companies (Consolidation) Act, 1908, with respect to private companies . . .	August 15	Not specified.



Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
26	<i>Highlands and Islands (Medical Service) Grant Act, 1913</i> , is an Act to provide a special grant for the purpose of improving medical service in the Highlands and Islands of Scotland and for other purposes connected therewith . . . . .	August 15 .	Not specified.
27	<i>Forgery Act, 1913</i> , is an Act to consolidate, simplify and amend the law relating to forgery and kindred offences . . . . .	August 15 .	January 1, 1914.
28	<i>Mental Deficiency Act, 1913</i> , is an Act to make further and better provision for the care of feeble-minded and other mentally defective persons, and to amend the Lunacy Acts . . . . .	August 15 .	April 1, 1914.
29	<i>Intermediate Education (Ireland) Act, 1913</i> , is an Act to amend the law relating to intermediate education in Ireland . . . . .	August 15 .	Not specified.
30	<i>Finance Act, 1913</i> , is an Act to continue the duty of Customs on tea and to re-impose Income Tax (including super-tax) and to apply with respect to Income Tax (including super-tax) the like provisions as were applied in the last preceding year . . . . .	August 15 .	Not specified.
31	<i>Industrial and Provident Societies (Amendment) Act, 1913</i> , is an Act to amend the Industrial and Provident Societies Act, 1893 . . . . .	August 15 .	January 1, 1914.
32	<i>Ancient Monuments Consolidation and Amendment Act, 1913</i> , is an Act to consolidate and amend the law relating to ancient monuments and for other purposes in connection therewith . . . . .	August 15 .	Not specified.
33	<i>Temperance (Scotland) Act, 1913</i> , is an Act to promote temperance in Scotland by conferring on the electors in prescribed areas control over the grant and renewal of certificates; by securing a later hour of opening for licensed premises; by amending the law relating to clubs; and by other provisions incidental thereto . . . . .	August 15 .	On expiration of 8 years from June 1, 1912.
34	<i>Bankruptcy and Deeds of Arrangement Act, 1913</i> , is an Act to amend the law with respect to bankruptcy and deeds of arrangement . . . . .	August 15 .	April 1, 1914.
35	<i>Appropriation Act, 1913</i> , is an Act to apply certain sums out of the Consolidated Fund to the service of the years ending on March 31, 1912 and 1914, and to appropriate the supplies granted in this session of Parliament . . . . .	August 15 .	Not specified.
36	<i>Bishoprics of Sheffield, Chelmsford, and for the County of Suffolk Act, 1913</i> , is an Act to provide for the foundation of Bishoprics of Sheffield, Chelmsford, and of another diocese to be formed of such parts of the dioceses of Ely and Norwich as are situate within the county of Suffolk, and for other matters incidental thereto . . . . .	August 15 .	Not specified.

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
37	<i>National Insurance Act, 1913</i> , is an Act to amend Parts I. and III. of the National Insurance Act, 1911 . . . . .	August 15 .	Section 29 on passing of Act. As to other dates of operation of Act, <i>see</i> section 43, sub-s. 3.
38	<i>Mental Deficiency and Lunacy (Scotland) Act, 1913</i> , is an Act to make better and further provision for the care of mentally defective persons, and to amend the law relating to lunacy in Scotland . . . .	August 15 .	May 15, 1914.



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III. *Irish Statutes*, p. cxxii. IV. *Scottish Statutes*, p. cxxiv. V. *Colonial Statutes*, p. cxxiv.

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13 Edw. 1 (*Circumspecte Agatis*). ELY  
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34 Edw. 3, c. 1 (*Justices*). LANSBURY v.  
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26 Hen. 8, c. 3 (*First Fruits; Tenths*). ARCH-  
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13 Eliz. c. 2 (*Bulls from Rome*). MATHEW v.  
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29 T. L. R. 471

13 Eliz. c. 5 (*Fraudulent Conveyances*).  
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21 Jac. 1, c. 4 (*Penal Statutes*), s. 3. FORBES  
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21 Jac. 1, c. 16 (*Limitations*). *In re* RAGGI.  
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29 Car. 2, c. 3 (*Statute of Frauds*), s. 4.  
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31 Car. 2, c. 2 (*Habeas Corpus*), s. 6. REX v.  
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7 Anne. c. 12 (*Diplomatic Privileges*),  
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7 Geo. 3, c. 37 (*London*), s. 51. ASSOCIATED  
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14 Geo. 3, c. 78 (*Fires Prevention, Metropolis*),  
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22 Geo. 3, c. 45 (*House of Commons (Con-*  
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- 38 Geo. 3, c. 5 (*Land Tax Redemption*), ss. 4, 17, 18, 80. CITY OF LONDON LAND TAX COMMS. v. CENTRAL LONDON RY. CO. - H. L. (E.) [1913] A. C. 364

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- 39 & 40 Geo. 3, c. 98 (*Accumulations*), s. 1. *In re CATTELL* - C. A. [1913] W. N. 306  
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1801.

- 41 Geo. 3, c. 52 (*House of Commons (Disqualification)*), ss. 1, 6. *In re SAMUEL* P. C. [1913] A. C. 514  
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- 42 Geo. 3, c. 116 (*Land Tax Redemption*), ss. 8, 38. CITY OF LONDON LAND TAX COMMS. v. CENTRAL LONDON RY. CO. - H. L. (E.) [1913] A. C. 364  
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- 4 Geo. 4, c. 60 (*Lotteries*), s. 41. BARTLETT v. PARKER Div. Ct. [1912] 2 K. B. 497  
 4 Geo. 4, c. 76 (*Marriage*), ss. 22, 26. BODMAN v. BODMAN - - - 108 L. T. 383

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- 5 Geo. 4, c. 83 (*Vagrancy*), s. 3. SHAFTESBURY UNION (GUARDIANS) v. BROCKWAY - Div. Ct. [1913] 1 K. B. 159  
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1825.

- 6 Geo. 4, c. 50 (*Juries*), s. 34. BARKER v. LEWIS AND PEAT - [1913] 3 K. B. 34

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- 2 & 3 Will. 4, c. 45 (*Representation of the People*), s. 26. WHITE v. BOWN [1913] 1 K. B. 78  
 2 & 3 Will. 4, c. 71 (*Prescription*). FLYNN v. HABTE - - - [1913] 2 I. R. 322

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- 3 & 4 Will. 4, c. 27 (*Real Property Limitations*), ss. 1, 34. *In re FOX*. BROOKS v. MARSTON - - - [1913] 2 Ch. 75  
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- 5 & 6 Will. 4, c. 50 (*Highway*), s. 23. CABABÉ v. WALTON-UPON-THAMES U. D. C. H. L. (E.) [1913] W. N. 369  
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- 6 & 7 Will. 4, c. 32 (*Building Societies*), s. 1. *In re BIRKBECK PERMANENT BUILDING SOCIETY* - C. A. [1912] 2 Ch. 183  
 6 & 7 Will. 4, c. 37 (*Bread*), s. 7. POLLARD v. TURNER - Div. Ct. [1912] 3 K. B. 625  
 6 & 7 Will. 4, c. 71 (*Tithe*), s. 12. ECCLESIASTICAL COMMS. v. UPJOHN Div. Ct. [1913] 1 K. B. 501  
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- 1 Vict. c. 26 (*Wills*), s. 24. *In re ASHBURNHAM*. GABY v. ASHBURNHAM 107 L. T. 601

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- 3 & 4 Vict. c. 92 (*Non-parochial Registers*), ss. 6, 9. *In re WOODWARD*. KENWAY v. KIDD - - - [1913] 1 Ch. 392

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- 4 & 5 Vict. c. 38 (*School Sites*). PRICE v. ATT.-GEN. - - - H. L. (E.) [1913] W. N. 337

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- 5 & 6 Vict. c. 35 (*Income Tax*), s. 60, Sched. A. No. 3. MULLINGAR R. D. C. v. ROWLES Div. Ct. (Ir.) [1913] 2 I. R. 44  
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*),  
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- 7 Edw. 7, c. 17 (*Probation of Offenders*), s. 1.  
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- 7 Edw. 7, c. 23 (*Criminal Appeal*), s. 4,  
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7 Edw. 7, c. 53 (*Public Health Acts Amend-  
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8 Edw. 7, c. 28 (*Agricultural Holdings*), s. 11  
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8 Edw. 7, c. 48 (*Post Office*), s. 23, sub-s. 1.  
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8 Edw. 7, c. 68 (*Port of London*). PORT  
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9 Edw. 7, c. 29 (*Education (Administrative*  
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9 Edw. 7, c. 30 (*Cinematographs*), ss. 5, 6.  
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9 Edw. 7, c. 34 (*Electric Lighting*), s. 14,  
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9 Edw. 7, c. 44 (*Housing, Town Planning, &c.*),  
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9 Edw. 7, c. 49 (*Assurance Companies*), ss. 1, 2,  
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10 Edw. 7, c. 8 (*Finance*), ss. 1, 2, 25.  
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- 10-Edw. 7, c. 8 (*Finance*), s. 44, sub-s. 2.  
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- 10 Edw. 7 & 1 Geo. 5, c. 24 (*Licensing (Con-  
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- 1 Geo. 5, c. 2 (*Revenue*), s. 3, sub-s. 2. INLAND  
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- 1 & 2 Geo. 5, c. 50 (*Coal Mines*), s. 61, sub-s. 2.  
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- 1 & 2 Geo. 5, c. 52 (*Rag Flock*), s. 1, sub-s. 1.  
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- s. 1, sub-ss. 1, 2; Sched. I., Part I. (a),  
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- s. 69, sub-s. 2. IRISH INSURANCE  
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- 1 & 2 Geo. 5, c. 55 (*National Insurance*),  
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- 1 & 2 Geo. 5, c. 57 (*Maritime Conventions*), s. 1.  
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- 2 Geo. 5, c. 2 (*Coal Mines (Minimum Wage)*)  
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- 2 Geo. 5, c. 3 (*Shops*), s. 1, sub-s. 1. TODD,  
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- — — s. 4, sub-ss. 1, 6; Sched. II. LON-  
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- 2 & 3 Geo. 5, c. 20 (*Criminal Law Amendment*),  
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1766.

- 7 Geo. 3, c. xxxvii. (*Thames Embankment*).  
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1791.

- 31 Geo. 3, c. lix. (*Worcester and Birmingham  
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NAVIGATION CO. v. WORCESTER COR-  
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&C., CO. - [1913] 1 K. B. 422

1817.

- 57 Geo. 3, c. xxix. (*Metropolitan Paving*),  
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PORATION - [1913] 1 Ch. 415

1825.

- 6 Geo. 4, c. xxvii. (*Lord Radnor's Estate*),  
s. 5. BROCKMAN v. FOLKESTONE COR-  
PORATION - C. A. 10 L. G. R. 856

1827.

- 7 Geo. 4, c. cxiii. (*London Roads*), s. 140.  
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1831.

- 1 & 2 Will. 4, c. lxxvi. (*Coal*), s. 52. HOUGHTON  
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Div. Ct. [1913] 2 K. B. 343

1832.

- 2 & 3 Will. 4, c. cv. (*Pilotage—Humber*), s. 24  
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1838.

- 1 & 2 Vict. c. ci. (*Coal*), s. 5. HOUGHTON v.  
FEAR BROTHERS, LD.  
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1863.

- 26 & 27 Vict. c. xxxi. (*Surrey Commercial  
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- 26 & 27 Vict. c. ccxxv. (*Great Eastern Railway  
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TRIC CO., LD. v. GREAT EASTERN RY.  
CO. - Div. Ct. [1913] 3 K. B. 15

1872.

- 35 & 36 Vict. c. lxxviii. (*Bolton Corporation*),  
s. 11. MAYOR OF BOLTON v. SCOTT  
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1874.

- 37 & 38 Vict. c. xxx. (*Mersey Docks*), s. 11.  
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1877.

- 40 & 41 Vict. c. clxxxviii. (*Bolton Improve-  
ment*), s. 113. MAYOR OF BOLTON v.  
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1889.

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1893.

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s. 36. LANCASHIRE AND YORKSHIRE  
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1894.

57 & 58 Vict. c. cxxiii. (*London Building*),  
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— ss. 22, 25, 27, 215, 216. CLODE v.  
LONDON C. C. - Div. Ct. 11 L. G. R.  
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— ss. 88, 90, 91. BARRY v. MINTURN  
H. L. (E.) [1912] A. C. 584

1898.

61 & 62 Vict. c. cclvii. (*Paignton Improvement*),  
ss. 46, 48, 50. KIRBY v. PAIGNTON  
U. D. C. - [1913] 1 Ch. 337

1899.

62 & 63 Vict. c. cclxvi. (*London County  
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[1913] W. N. 298

1900.

63 & 64 Vict. c. clvii. (*Ramsgate Corporation*),  
s. 33. CASSELL v. JONES  
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1901.

1 Edw. 7, c. cclv. (*Leeds Corporation*) ss. 4, 33,  
34, 36—49. SUGDEN v. LEEDS COR-  
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1903.

3 Edw. 7, c. clxxxi. (*Willesden Urban District  
Council*), s. 32. UPJOHN v. WILLES-  
DEN U. D. C. - Div. Ct. 11 L. G. R. 313

1905.

5 Edw. 7, c. xcvi. (*Stepney Borough Council  
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1906.

6 Edw. 7, c. xcii. (*Hampstead Garden  
Suburb*). HAMPSTEAD GARDEN  
SUBURB TRUST, LD. v. DENBOW  
77 J. P. 318

1907.

7 Edw. 7, c. lxxxix. (*Worthing Gas*), ss. 5, 7,  
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7 Edw. 7, c. clxxi. (*Metropolitan Water Board  
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— ss. 16, 17. METROPOLITAN WATER  
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1908.

8 Edw. 7, c. clxvii. (*London Electric Supply*),  
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1910.

10 Edw. 7 & 1 Geo. 5, c. cxvii. (*Bradford Cor-  
poration*), s. 53. ARMITAGE v. NICHOL-  
SON - Div. Ct. [1913] W. N. 116

10 Edw. 7 & 1 Geo. 5, c. cxxiii. (*Eastbourne  
Corporation*), s. 46. REX v. SUSSEX  
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10 Edw. 7 & 1 Geo. 5, c. cxxix. (*London County  
Council—General Powers*). LECTURE  
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1911.

1 & 2 Geo. 5, c. cvii. (*Woking U. D. C.—  
Basingstoke Canal*). *In re* WOKING  
U. D. C. (BASINGSTOKE CANAL) ACT,  
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1833.

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[1913] 2 I. R. 332

1844.

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[1913] 1 I. R. 1

1845.

8 & 9 Vict. c. cxliii. (*Belfast Improvement*),  
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1847.

- 10 & 11 Vict. c. 32 (*Landed Property Improvement*). ATT.-GEN. v. HOWLEY  
[1913] 1 I. R. 455

1851.

- 14 & 15 Vict. c. 93 (*Petty Sessions*). REX  
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1 I. R. 342
- s. 24. REX v. CORK (RECORDER)  
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1852.

- 15 & 16 Vict. c. 63 (*Valuation*), ss. 12, 27.  
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1853.

- 16 & 17 Vict. c. 113 (*Common Law Procedure*  
(Ir.)), s. 20. *In re* MURPHY. PREN-  
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1854.

- 17 & 18 Vict. c. 103 (*Towns Improvement*), s. 30.  
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- ss. 60, 62. WHALEY v. GREAT  
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1857.

- 20 & 21 Vict. c. 60 (*Bankruptcy and*  
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1858.

- 21 & 22 Vict. c. 42 (*Prescription*). FLYNN v.  
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*County Courts Act, 1903.* *County Courts (Extended Jurisdiction) Order in Council, 1912,* dated Dec. 16, 1912, coming into operation on Jan. 1, 1913, amending the County Courts Order in Council, 1904. (See [1904] W. N. Pt. II., v. 333.) W. N. 1913 (Jan. 4), p. 1.

*County Courts Act, 1888, and County Court Rules, 1903.* *County Court Offices (Knaresborough) Order, 1912.* Order of the Lord Chancellor dated Dec. 30, 1912, coming into operation on Feb. 1, 1913, directing the keeping open of an office of the County Court of Yorkshire, West Riding, at Knaresborough, one day in every week. W. N. 1913 (Jan. 25), p. 92.

*County Courts Act, 1888.* Order in Council of Feb. 11, 1913, extending the Boundaries of the Colchester, Clacton, and Harwich County Court District. W. N. 1913 (Mar. 22), p. 153.

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W. N. 1913 (Apr. 19), p. 213

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*National Health Insurance (Special Orders Acceleration) Order* (No. 2), 1912. Dated Nov. 29, 1912. W. N. 1913 (Jan. 4), p. 2.

*National Health Insurance (Special Customs) Order, 1912* (No. 3). Dated Oct. 24, 1912. W. N. 1913 (Jan. 4), p. 2.

*National Health Insurance (Administration of Medical Benefit) Regulations, 1912.* Dated Dec. 5, 1912. W. N. 1913 (Jan. 4), p. 8.

*National Health Insurance (Further Payments to Approved Societies) Order, 1912* (No. 2). Dated Dec. 18, 1912. W. N. 1913 (Jan. 18), p. 78.

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*National Health Insurance. Table dated Jan. 4, 1913, prepared by the National Health Insurance Joint Committee under s. 5, sub-s. 1, of the National Insurance Act, 1911* (1 & 2 Geo. 5, c. 55), showing the voluntary rate for female insured persons entering into insurance on or after Jan. 15, 1913. W. N. 1913 (Jan. 25), p. 92.

*Unemployment Insurance. Special Exclusion (Drivers etc.) Order, 1912.* Dated July 31, 1912, taking effect as from the commencement of the National Insurance Act, 1911. W. N. 1913 (Jan. 25), p. 93.

*The National Health Insurance (Special Employers Custom) Provisional Order, 1912* (No. 1), dated Dec. 21, 1912, made by the Joint Committee established under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), acting jointly with the Insurance Commrs. under s. 47, sub-s. 7, of that Act. W. N. 1913 (Feb. 1), p. 99.

*The National Health Insurance (Subsidiary Employments) Provisional Order, 1912* (No. 4), being Provisional Special Order, dated Dec. 30, 1912, made by the Joint Committee established under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), and by the Insurance Commrs., the Scottish Insurance Commrs., the Irish Insurance Commrs., and the Welsh Insurance Commrs., acting jointly, as to Subsidiary Employment, and Provisional Special Order, dated Dec. 20, 1912, made by the said Joint Committee under sub-s. 2 of s. 1 of the Act. W. N. 1913 (Feb. 1), p. 100.

*The National Health Insurance (Special Customs) Amended Provisional Order, 1912* (No. 1), dated Jan. 15, 1913, made by the National Health Insurance Joint Committee, and by the Insurance Commrs., the Scottish Insurance Commrs., the Irish Insurance Commrs., and the Welsh Insurance Commrs., acting jointly, under s. 47 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 8), p. 107.

*The National Health Insurance (Special Customs) Amended Provisional Order, 1912* (No. 2), dated Jan. 15, 1913, made by the National Health Insurance Joint Committee and by the Insurance Commrs. and the Welsh Insurance Commrs., acting jointly, under s. 47 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 8), p. 109.

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*The National Health Insurance (Wales) (Payments to Insurance Committees) Orders, 1913,* dated Jan. 4, 1913, made by the Welsh Insurance Commrs. under ss. 78 and 82 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 15), p. 117.

**\*INSURANCE (NATIONAL) ACT, 1911—continued.**

*The National Health Insurance (Wales) (Payment by Approved Societies to Insurance Committees) Order, 1913, dated Jan. 4, 1913, made by the Welsh Insurance Commrs. under ss. 78 and 82 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 15), p. 117.*

*The National Health Insurance (Further Payments to Approved Societies) (Wales) Order, 1913, dated Jan. 4, 1913, made by the Welsh Insurance Commrs. under ss. 78 and 82 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 15), p. 118.*

*Table, dated Jan. 15, 1913, prepared by the National Health Insurance Joint Committee, under s. 55 (1) of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), of Reserve Values for Male Insured Persons, who at the date of joining an Approved Society or becoming a Person entitled to Benefits out of the Navy and Army Insurance Fund are serving in the Navy or Army and to whom s. 46 of that Act applies. W. N. 1913 (Feb. 15), p. 118.*

*The National Health Insurance (Collection of Contributions) Regulations (England), 1913, dated Jan. 20, 1913, made by the National Health Insurance Joint Committee and the Insurance Commrs., acting jointly, under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), as to the Payment and Collection of Contributions. W. N. 1913 (Feb. 22), p. 123.*

*The National Health Insurance (Administration Expenses) Regulations, 1913, dated Jan. 20, 1913, made by the National Health Insurance Joint Committee under the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), as to the Administration Account of an Approved Society. W. N. 1913 (Feb. 22), p. 127.*

*The National Health Insurance (Further Payments to Approved Societies) (Wales) Order, 1913 (No. 2), dated Jan. 22, 1913, made by the Welsh Insurance Commrs. under ss. 78 and 82 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 22), p. 128.*

*The National Health Insurance (Payments to Insurance Committees) Order (No. 2), 1913, dated Jan. 24, 1913, made by the Insurance Commrs. under s. 78 of the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55). W. N. 1913 (Feb. 22), p. 128.*

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*Rules and Fee Order, 1913. Dated Feb. 25, 1913, came into operation, Mar., 1913. W. N. 1913 (Mar. 22), p. 154.*

**LONDON—POLICE COURTS.**

*Metropolitan Police Courts—Order in Council, dated Dec. 16, 1912, as to the removal of Marlborough Street Police Court. W. N. 1913 (Jan. 18), p. 75.*

**LONDON (COUNTY OF)—QUARTER SESSIONS.**

*Order of the Secretary of State, dated Dec. 24, 1912, approving Scheme of the London County Council for regulating the holding of Courts of Quarter Sessions for the County of London, as provided by s. 42 (7) of the Local Government Act, 1888 (51 & 52 Vict. c. 41). W. N. 1913 (Mar. 1), p. 138.*

**LUNACY.****LUNACY ACT, 1890.**

**RULE, DATED MARCH 12, 1913, MADE BY THE COMMISSIONERS IN LUNACY WITH THE APPROVAL OF THE LORD CHANCELLOR.**

*Lunacy Act, 1890. In Form 7 in the Second Schedule the words "of county courts" shall be inserted after the word "judge," and the words "having jurisdiction in the district within which I am detained" shall be omitted. W. N. 1913 (Apr. 5), p. 186.*

**PATENTS AND DESIGNS ACT, 1907.****ORDER OF THE LORD CHANCELLOR.**

*By virtue of the 92nd section, sub-section 2, of the Patents and Designs Act, 1907, appointing the Honourable Mr. Justice Warrington to be the Judge of the High Court to whom an appeal shall be made or a petition referred or presented under the said section. W. N. 1913 (Apr. 12), p. 209.*

**PRIVY COUNCIL—JUDICIAL COMMITTEE.**

*Order in Council of Dec. 16, 1912, amending the Order in Council of Feb. 15, 1909, as to Appeals from the Full Court of the Supreme Court of the Colony of Sierra Leone to His Majesty in Council. W. N. 1913 (Jan. 18), p. 75.*

*Order in Council of Dec. 16, 1912, making provision for appeals to His Majesty in Council from the Special Court of the Bechuanaland Protectorate and from any Court of Resident Commr. of the said Protectorate. W. N. 1913 (Jan. 18), p. 75.*

*Order in Council of Dec. 16, 1912, prescribing Rules for uniformity of practice and procedure in Appeals to His Majesty in Council from the Federated Malay States. W. N. 1913 (Jan. 18), p. 77.*

**RAILWAY AND CANAL TRAFFIC ACT, 1888.**

*Appointment by the Lord Chancellor of the Hon. Mr. Justice John Eldon Bankes to be the ex-officio Commissioner for England of the Railway and Canal Commission for the period of five years. Dated July 10, 1913. W. N. 1913 (July 19), p. 321.*

**RULES OF THE SUPREME COURT.****(POOR PERSONS.)**

*Dated the 28th day of April, 1913.*

**ORDER XVI.**

*Repealing Part IV. (Rules 23 to 31, both inclusive) of Order XVI. of the Rules of the Supreme Court, 1883, and substituting other Rules in lieu thereof. W. N. 1913 (May 10), p. 231.*



**RULES OF THE SUPREME COURT—continued.**

• *Provisional Rule, dated July 28, 1913, published pursuant to the Rules Publication Act, 1893:—Altering Rule 32 of the Supreme Court (Poor Persons) Rules, and postponing until Jan. 1, 1914, the operation of these Rules. W. N. 1913 (Aug. 2), p. 339.*

*Rule dated Dec. 4, 1913, repealing Rules of the Supreme Court (Poor Persons), 1913, and continuing Order XVI., Part IV., in operation until further order.*

**FEEs TO TRINITY MASTERS.**

JAN. 12, 1893.

*Repeal of Rule 1 and substitution of fresh Rule dated July 1, 1913. W. N. 1913 (July 19), p. 321.*

**SOLICITORS ACT, 1877.**

*Order made under s. 13 of the Solicitors Act, 1877, by the Master of the Rolls with the concurrence of the Lord Chancellor and the Lord Chief Justice, dated June 16, 1913. W. N. 1913 (July 26), p. 325.*

**TRADE UNION ACT RULES, 1913.**

*Dated the 27th Nov., 1913, and coming into force forthwith. W. N. 1913 (Dec. 20), p. 461.*

**WORKMEN'S COMPENSATION RULES.**

*Dated the 7th April, 1913, coming into force 12th May, 1913. W. N. 1913 (Apr. 19), p. 216.*

[NOTE.—These Rules were annulled by the Consolidated Workmen's Compensation Rules, dated May 6, 1913, coming into operation July 1, 1913.]

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## 1912.

### ERRATA.

- Page v., lines 3 and 4 from top. *Tr.* 718 and 690.
- Page x., line 6 from bottom. *For* "Sanken" *read* "Santen."
- Page xl., lines 20 and 21 from top. *Tr.* 766 and 761.
- Page xlv., line 19 from top (Poultney, *In re*). *For* "1 Ch. 245" *read* "2 Ch. 541."
- Page lii., line 6 from top. *For* "Sanken" *read* "Santen."
- Page lxvi. (left col.), line 30 from top. *For* "Doddington" *read* "Dodington," and *for* "1907" *read* "1897." Line 23 from bottom, *for* "518" *read* "505." (Right col.), line 29 from top. *After* "C. A." *ins.* "[1912] 3 K. B. 162."
- Page lxvii. (left col.), line 6 from top. *For* "Chip" *read* "Chipp." Line 7 from top. *For* "MUNRO" *read* "MONRO."
- Page lxviii. (right col.), line 18 from top. *After* "H. L. (E.)" *ins.* "[1912] A. C. 709." Line 25 from top. *For* "744" *read* "714." Line 11 from bottom. *For* "Hansen" *read* "Hansen."
- Page lxix. (left col.), line 12 from bottom. *Tr.* "Div. Ct." to line 11 *before* "22."
- Page lxx. (left col.), line 20 from bottom. *For* "88" *read* "38."
- Page lxxi. (left col.), line 27 from top. *After* "v. Andrews" *ins.* "15 Ch. D. 428."
- Page lxxii. (left col.), line 27 from top. *For* "A. C. 276" *read* "1 I. R. 138."
- Page lxxiv. (right col.), line 24 from bottom. *For* "1900" *read* "1909." Line 26 from bottom. *After* "C. A." *ins.* "[1912] 3 K. B. 162."
- Page lxxv. (right col.), line 27 from top. *For* "HAMHOOK" *read* "HAMBROOK."
- Page lxxvi. (right col.), line 17 from bottom. *For* "[1892]" *read* "[1899]." Line 9 from bottom. *For* "1 K. B." *read* "2 K. B." Line 8 from bottom. *For* "24" *read* "26."
- Page lxxvii. (left col.), line 29 from bottom. *For* "P. D." *read* "P. & D." (Right col.), line 7 from top. *After* "Priestley" *ins.* "[1901] A. C. 208."
- Page lxxviii. (left col.), line 30 from top. *Dele* "Keane:—*Rev* v. [1912] W. N. 205." (Right col.), line 24 from top. *For* "47" *read* "17." Line 29 from top. *After* "(1872)" *ins.* "L. R."
- Page lxxix. (left col.), line 15 from bottom. *After* "Mark" *ins.* "[1900] 2 Ch. 238." (Right col.), line 30 from top. *For* "722" *read* "772."
- Page lxxx. (left col.), line 14 from bottom. *For* "[1912]" *read* "[1902]."
- Page lxxxi. (left col.), line 27 from top. *For* "[1899] 2 Q. B. 560" *read* "[1900] 1 Q. B. 130n." Line 20 from bottom. *For* "268" *read* "268." (Right col.), line 18 from bottom. *For* "830" *read* "820."
- Page lxxxii. (left col.), line 22 from top. *For* "[1911]" *read* "[1891]."
- Page lxxxiv. (right col.), line 22. *For* "K. B." *read* "I. R."
- Page lxxxv. (left col.), lines 4 and 5 from bottom. *Dele* "Rev v. Keane; Rev v. Watson. [1912] W. N. 205." (Right col.), line 29 from bottom. *Dele.* "Rev v. Parker (1873) 3 Dougl. 242."
- Page lxxxvii. (left col.), line 29 from bottom. *For* "194" *read* "548."
- Page lxxxviii. (right col.), line 15 from top. *After* "Co." *add* "[1912] 2 Ch. 134n."
- Page lxxxix. (left col.), line 6 from bottom. *For* "3 H. L." *read* "2 H. L." (Right col.), line 23 from top. *For* "Applicable" *read* "Applied." Line 26 from bottom. *Before* "1 K. B." *ins.* "[1912]."
- Page xc. (left col.), line 1 from top. *For* "1904" *read* "1894." (Right col.), line 17 from bottom. *For* "669" *read* "699."
- Page xci. (left col.), line 13 from top. *For* "W. N. 181" *read* "2 Ch. 541." Line 12 from bottom. *After* "Vine" *ins.* "(1878) 18 Ch. D. 364." Line 10 from bottom. *After* "C. A." *ins.* "[1912] 3 K. B. 162."
- Page cxii. (left col.), line 30 from top. *For* "[1911]" *read* "[1912]." Line 20 from bottom. *For* "[1911]" *read* "[1912]."
- Page cxv. (right col.), line 23 from top. *For* "C. C. A." *read* "C. A."

# ERRATA.

- Page cxvi. (right col.), line 12 from bottom. For "CAINBRIC" read "CAMBRIC."
- Page cxvii. (left col.), line 28 from bottom. After "cxvii." ins. "(Crystal Palace) - SAUNDERS v. BEVAN."
- Page cxviii. (right col.), line 21 from bottom. For "Regulations" read "Regulation."
- Page cxix. (right col.), line 6 from top. For "PACCARE" read "PACUARE."
- Column 2, line 7, from bottom. After "Action" ins. "of."
- Column 42, line 11 from top. Before "[1912]" ins. "105 L. T. 959."
- Column 47, line 9 from bottom. Before "[1912]" ins. "106 L. T. 47."
- Column 90, line 27 from bottom. For "541" read "544."
- Column 95, line 31 from top. For "L. J." read "L. T."
- Column 113, line 3 from top. After "C. A." ins. "[1912] 2 Ch. 571."
- Column 114, line 15 from top. After "Warrington J." ins. "[1912] 2 Ch. 609."
- Column 186, line 32 from top. After "C. A." ins. "[1912] 2 Ch. 528."
- Column 190, line 23 from top. After "Warrington J." ins. "[1912] 2 Ch. 602."
- Column 245, line 10 from top. After "C. A." ins. "[1912] 2 Ch. 633."
- Column 280, line 20 from top. After "Parker J." ins. "[1912] 2 Ch. 563."
- Column 325, line 31 from bottom. For "830" read "820."
- Column 335, line 13 from top. After "(K. B.)" for "425" read "978."
- Column 339, line 8 from top. For "[1912]" read "[1913]." Line 27 from bottom. For "365" read "363."
- Column 449, line 6 from bottom. After "C. A." read "[1912] 2 K. B. 335."
- Column 491, line 2 from top. For "1907" read "1897."
- Column 542, line 24 from top. Before "S. J." ins. "57."
- Column 599, line 8 from bottom. Dele "K. B. Div."
- Column 614, line 16 from top. Before "Ch." ins. "2."
- Column 627, line 29 from bottom. For "SANKEN" read "SANTEN."
- Column 714, line 3 from bottom. Dele "injury" and read "Held, that there was evidence to support the."
- Column 739, line 15 from top. Before "5 B. W. C. C." ins. "C. A." Line 21 from bottom. Before "5 B. W. C. C." ins. "C. A."
- Column 748, line 25 from top. After "(No. 2)" ins. "5 B. W. C. C. 620."

# THE COMPLETE CURRENT DIGEST, 1913.

FINAL PART.

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## DIGEST OF CASES.

THIS Digest includes all cases reported in the "Law Reports," the "Weekly Notes," and the "Irish Reports," during the period from January to December, 1913, inclusive, together with selected cases from the "Court of Justiciary Cases" and the "Court of Session Cases," and all cases in the High Court, Court of Appeal, House of Lords and Privy Council appearing during the period from January, 1913, up to the end of December, 1913, in the following series of Reports:—

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BUTTERWORTH'S WORKMEN'S COMPENSATION CASES.

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( 1 )

**ABANDONMENT**—Motion—Costs.

*See COSTS—Motion.*

— Tramway company—Deposit—Landowner—Compensation—Statutory obligation.  
*See TRAMWAY.*

**ABATEMENT**—Will—Legacy on release of annuity under a settlement—Deficiency of assets.

*See WILL—Legacy.*

**ACCIDENT.**

*See FATAL ACCIDENTS ACT, 1846, and WORKMEN'S COMPENSATION.*

— House let for habitation—Defective premises—Accident arising from defect—Personal injury to daughter of tenant.

*See LANDLORD AND TENANT—Lease.*

**ACCOMPLICE.**

*See CRIMINAL LAW.*

**ACCOUNT**—Stockbroker—Open account—Death of client before settling day—Duty of broker—Liability to account.

*See STOCK EXCHANGE.*

**ACKNOWLEDGMENT**—Debt.

*See LIMITATIONS, STATUTES OF — Acknowledgment.*

— Gift of chattels—Void deed—Voluntary gift—Redelivery—Passing of property.

*See GIFT.*

**ACT OF BANKRUPTCY.**

*See BANKRUPTCY—Act of Bankruptcy.*

**ACTION.**

*See APPEAL—Court of Appeal.*

— Declaration.

*See LOCAL GOVERNMENT—Rural District Council; MINES—Coal Mines.*

( 2 )

**ACTION**—continued.

*Joinder of causes of action—Claim by executor—Personal claim—R. S. C., 1883, Order XVIII. rr. 1, 5, 7.*

Appeal from an order of Astbury J., sitting as vacation judge in chambers.

The writ of summons was indorsed with a claim by the plt. as against both defts. to recover possession of a house, and as executor of the late Lord Tredegar and also in his personal capacity as against the first deft. to recover 13l. 10s. arrears of rent; and mesne profits.

The first deft. was the assignee of a lease of the house in question granted by the late Lord Tredegar, who was tenant for life of the property, at a ground rent of 9l. a year. The second deft. was sub-lessee of the house. On Sept. 29, 1912, a year's rent, 9l., became due. The late Lord Tredegar died on Mar. 11, 1913. The plt. was his sole executor, and also became entitled in his personal capacity to the reversion expectant on the determination of the lease of the house. On Mar. 25, 1913, a further half-year's rent, 4l. 10s., became due. These two sums of 9l. and 4l. 10s. made up the sum of 13l. 10s. sued for in the action. On July 10, 1913, the writ was issued. The first deft. applied at chambers for an order to strike out the writ of summons or to stay proceedings in the action, on the ground that the plt. had joined a claim by him as executor with a claim by him personally, such last-mentioned claim not being alleged to arise with reference to the estate in respect of which he sued as executor. The district registrar refused to make the order, and Astbury J. affirmed his refusal.

The first deft. appealed.

The Court held that r. 5 of Order XVIII. was the rule governing this case. The claims by the plt. personally did not arise with reference

\* Statutory Rules and Orders other than those of a Local, Personal, or Temporary Character, issued in the year 1913; with a List of Statutory Orders of a Local Character arranged in Classes, an Appendix, of certain Orders in Council, &c., issued under the Royal Prerogative, and Index. Price 10s.

**ACTION**—*continued.*

to the estate of which he was executor, and therefore the joinder of the causes of action was not justified by r. 5. The proper order to make was that the plt. should have 14 days to elect as to which cause of action he would proceed with, and the trial must be confined to that cause of action, and, if he did not elect, that the proceedings in the action should be stayed. **TREDEGAR (LORD) v. ROBERTS AND ANOTHER** C. A. [1913] W. N. 325; 58 S. J. 118

**ACTS OF PARLIAMENT :**

See **STATUTE** and **STATUTES**.

**ADJOURNMENT**—Meeting.

See **COMPANY**—Meeting.

**ADMINISTRATION.**

*Accounts, col. 3.*

*Covenant, col. 4.*

*Executor, col. 5.*

*Legacy, col. 5.*

*Order. See WILL.*

*Probate. See PROBATE.*

**Accounts.**

*Life tenant of residue—Debts—Legacies—Estate duty—Legacy duty—Adjustment of accounts between tenant for life and remainderman.*

The rule laid down in *Allhusen v. Whittell* (1867) L. R. 4 Eq. 295,—that in adjusting the accounts between the tenant for life of the residuary estate of a testator and the remainderman the executors must be taken to have paid the debts and legacies not out of capital only or out of income only, but with such portion of the capital as, together with the income of that portion for one year from the testator's death, was sufficient for the purpose—although it worked perfectly in that case and works equally well in any case where the capital subtracted from the gross estate before the ascertainment of residue is not subtracted before the end of the first year from the testator's death, is not to be slavishly followed in every administration where residue is settled, and is inapplicable in hard and fast terms to a case where the subtractions from the estate occur at periods substantially anterior to the close of the first year.

*Allhusen v. Whittell* was founded on *Holgate v. Jennings* (1857) 24 Beav. 623, and did not enlarge the principle of that case, which was that the intermediate income of what is eaten up by payment of debts, &c., before the ascertainment of residue, cannot itself be income of residue or payable as such to a tenant for life of residue.

Observations on *Lambert v. Lambert* (1873) L. R. 16 Eq. 320.

A testator died on Feb. 6, 1911, having by his will given legacies to be paid free of all duty, and given his residuary estate as to each of four fifths thereof in trust for one of certain persons for life, with remainder to his or her children. The executors paid the estate duty, legacy duty, legacies and debts at various dates during the year immediately succeeding the

**ADMINISTRATION (Accounts)**—*continued.*

testator's death, for instance, over 47,000l. for estate duty on April 1, 1911, legacy duty of 1370l. on July 1, 1911, legacies of about 14,000l. in June and July, and debts and funeral expenses amounting to nearly 600l. in May, 1911 :—

*Held*, (1.) that the equitable bookkeeping or mode of adjustment to be adopted, on taking the account of the share of income during the year succeeding the testator's death due to the tenants for life, was that there should be charged against them, in respect of the payments for estate duty, debts, funeral and testamentary expenses, and duty on legacies given free of duty, interest upon the capital sum which would, with such interest, make up the sums paid in respect of estate duty, &c., such interest being calculated only during the respective periods from the death of the testator until the respective times when the sums paid for estate duty, &c., were in fact paid; and (2.) that the method of adjustment adopted in this particular case was not the only method available, and that extremely elaborate and minute calculations need not be gone through, in every case. *In re McEuen. McEuen v. PHELPS - Sargant J.* [1913] 2 Ch. 704; [1913] W. N. 307; 30 T. L. R. 44; 58 S. J. 82

**Covenant.**

*Lease by testator—Covenant by lessor—Specific devise of reversion—Liability for performance after lessor's death.*

In 1901 the testator demised freehold premises used as pottery works to lessees for a term of fourteen years at a yearly rent of 120l., and thereby covenanted with the lessees that he would, if required by the lessees during the term, build an additional oven and cone and shed and workshops according to the plan prepared by a named architect, the lessees paying an additional rent at the rate of 10l. per cent. per annum on the gross outlay of the lessor on the works, such additional rent to be computed from the date when the architect should certify in writing that the works had been completed. There was no actual plan in existence at the date of the lease, but shortly afterwards the architect prepared a plan and the workshops were erected by the testator, but disputes having arisen as to the proposed site of the other works, nothing further was then done. The testator died in 1909, having by his will, which was made in the same year, specifically devised the demised premises. In 1911 the lessee required the testator's executors to complete the works, and the disputes were referred to arbitration, and the arbitrator by his award required the executors to erect the works on part of the demised premises and to pay the costs of the award. On a summons raising the question whether the expenses of erecting the works and the costs of the arbitration were payable by the specific devisees in exoneration of the testator's general estate :—

*Held*, that the obligation imposed by the covenant was not one in its nature incident to the relation of landlord and tenant, but was preparatory to the complete establishment of that relation, and therefore, according to the law stated in *Eccles v. Mills* [1898] A. C. 360, was one which, as between the specific devisees of

**ADMINISTRATION (Accounts)—continued.**

the reversion and the general estate, ought to be primarily borne by the general estate. *In re HUGHES. ELLIS v. HUGHES* - Warrington J. [1913] 2 Ch. 491; [1913] W. N. 242; 109 L. T. 509

**Executor.**

— Devastavit.

See LIMITATIONS, STATUTES OF — Devastavit.

— Retainer.

See EXECUTOR.

**Legacy.**

— Abatement.

See WILL—Legacy.

*Pecuniary legacies — Personal estate insufficient — Specific devise disclaimed — Real estate descended — Marshalling assets.*

Dame Louisa Sitwell, widow, died in 1912, and by her will, after appointing the plts. executors and trustees of her will, and after giving divers pecuniary legacies and making divers specific bequests and devises, devised the residue of her freehold and leasehold estate unto her son, the deft. Sir G. Sitwell. And the testatrix bequeathed the residue of her personal estate upon trust for sale and conversion into money, and, after payment thereof of her funeral and testamentary expenses and debts and legacies, directed her trustees to hold the residue of the said moneys upon trusts under which her daughter, the deft. Lady Florence Sitwell, was tenant for life with a gift over.

The personal estate of the testatrix not specifically bequeathed was insufficient, after payment of debts and the testamentary and funeral expenses, to pay in full the pecuniary legacies. The deft. Sir G. Sitwell disclaimed the specific devise of the residuary freehold and leasehold estates, the freeholds being of small value and the leaseholds being subject to onerous covenants, and the executors arranged with the lessor to accept a surrender of the leaseholds on payment by them of 1000*l*. The deft. Sir G. Sitwell was the heir-at-law of the testatrix.

The question then arose whether, in administering the estate, the disclaimed freeholds ought not to be resorted to, as real estate descended, for payment of debts in priority to the fund for payment of the pecuniary legacies, and whether the pecuniary legatees were not entitled to have the assets of the testatrix marshalled accordingly.

Neville J., distinguishing *Hurst v. Hurst* (1884) 28 Ch. D. 159, held that there was an intestacy, and that the descended real estate was to be applied in payment of debts before pecuniary legacies. *In re SITWELL. WORSLEY v. SITWELL* - Neville J. [1913] W. N. 261; 57 S. J. 730

**Order.**

— Will—Construction—Charge of legacies and debts on specific realty and personalty in foreign country — Mixed fund — Non-exoneration of residuary personalty — Rule of construction.

See WILL—Charge.

**ADMINISTRATION—continued.****Probate.**

See PROBATE.

**ADMIRALTY.**

See SHIPPING.

**ADMISSIBILITY—Evidence.**

See EVIDENCE.

**ADULTERATION.**

*Analysis, col. 6.*

*Fertilizers and Feeding Stuffs, col. 6.*

*Inspector, Prosecution by, col. 7.*

*Milk, col. 7.*

*Prejudice of Purchaser, col. 8.*

*Warranty, col. 9.*

**Analysis.**

*Sale of food—Purchase for analysis—Notification to seller—Sale by agent—Notification to another agent of seller—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 14.*

DAVIES v. BURRELL - Div. Ct. [1912] 2 K. B. 243; 81 L. J. (K. B.) 736; 10 L. G. R. 645; 23 Cox, C. C. 81; 107 L. T. 91; [1912] W. N. 123; 76 J. P. 285; 28 T. L. R. 389

**Fertilizers and Feeding Stuffs.**

*Poultry food—Article artificially prepared—Invoice—Percentages of oil and albumenoids—Article prepared by being mixed—Fertilizers and Feeding Stuffs Act, 1906 (6 Edw. 7, c. 27), s. 1, sub-s. 2.*

By s. 1, sub-s. 2, of the Fertilizers and Feeding Stuffs Act, 1906, it is enacted that every person who sells for use as food for cattle or poultry any article which has been artificially prepared shall give to the purchaser an invoice stating, among other things, the name of the article, and, in the case of any article artificially prepared otherwise than by being mixed, broken, ground or chopped, what are the respective percentages (if any) of oil and albumenoids contained in the article.

Certain vendors sold for use as poultry food an article composed of certain ingredients, being articles artificially prepared within the meaning of the above enactment, mixed with another ingredient being an article artificially prepared by being broken. The article sold contained both oil and albumenoids:—

*Held*, that the article sold was an article artificially prepared otherwise than by being mixed, broken, ground or chopped within the meaning of the enactment, and that the vendors were bound to give to the purchaser an invoice stating the percentages of oil and albumenoids contained in the article. *LATHOM v. SPILLES & BAKERS, LD.* - Div. Ct. [1913] 2 K. B. 355; 82 L. J. (K. B.) 833; 11 L. G. R. 539; 23 Cox, C. C. 422; 108 L. T. 996; [1913] W. N. 116; 77 J. P. 277



**ADULTERATION—continued\*****Inspector, Prosecution by.**

*Necessity for inspector to prove his appointment—Sale of food—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 12, 13, 14, 20.*

The appellant, an inspector appointed under the Sale of Food and Drugs Acts, laid an information under s. 6 of the Sale of Food and Drugs Act, 1875, against the respondent for having sold to the prejudice of the purchaser an article of food which was not of the nature, substance, and quality of that demanded. At the hearing of the information the appellant in his evidence stated that his name was "Alexander Ross, an inspector under the Food and Drugs Act," and put in evidence the certificate of the public analyst which was addressed "To Inspector A. Ross." He was not cross-examined or asked to produce his appointment as inspector. When the appellant's case was closed, the respondent submitted that it was necessary that the appellant should prove that he was a duly authorized officer, and that, as he had not produced his appointment, the information should be dismissed. The appellant asked for an adjournment to enable him to produce his appointment. The justices were of opinion that it was necessary for the appellant formally to prove his appointment as inspector, and that, having failed to do so, he could not be allowed, after having closed his case, to call further evidence, and they dismissed the information:—

*Held*, that it was not necessary for the appellant formally to prove that he was an inspector by producing his appointment, and that, as he had given prima facie evidence that he was an inspector, the decision of the justices was wrong.

*Semble*, per Channell and Avory JJ., that it was not necessary for the appellant to prove that he was an inspector. *ROSS v. HELM* - Div. Ct. [1913] 3 K. B. 462; 82 L. J. K. B. 1322; 11 L. G. R. 36; 23 Cox, C. C. 248; 107 L. T. 829; 77 J. P. 13

**Milk.**

*Deficiency in fat—Milk not tampered with or adulterated—Public health—Food and drugs—Genuineness of milk—Milk sold in condition yielded by cow—Deficiency of fat due to method of feeding—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Milk Regulations, 1901, (1) and (2).*

The Sale of Food and Drugs Act, 1875, s. 6, makes it an offence to sell any article of food "which is not of the nature, substance, and quality demanded" by the purchaser. The Sale of Milk Regulations, 1901, (1) and (2), provide that where milk contains less than a certain percentage of milk fats and solids, "it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine by reason of the abstraction therefrom" of milk fat or solids "or the addition thereto of water."

In a complaint the offence charged was that of selling "sweet milk which was not of the nature, substance, and quality of sweet milk, the article demanded" by the purchaser, in respect that "it did not contain the percentage

**ADULTERATION (Milk)—continued.**

of milk fat and solids required by the Regulations, contrary to the Sale of Food and Drugs Act, 1875, s. 6, and to the Sale of Milk Regulations, 1901."

It was proved that the milk did not contain the percentage of milk fat and solids required by the regulations; that it had not been tampered with or adulterated, but had been sold in the same condition as yielded by the cows; and that the deficiency of milk fat and solids was due to the method of feeding, which had been purposely adopted to produce quantity of milk irrespective of quality:—

*Held*, that the milk was "genuine" and that the accused was not guilty of the offence charged.

*Smithies v. Bridge* [1902] 2 K. B. 13, commented on. *SCOTT v. JACK* - Ct. Just. (Se.) 1912 S. C. (J.) 87

*Deficiency in fat—Two milkings of the same cows in one morning—Deficiency prima facie inconsistent with ordinary milking—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

In proceedings under s. 6 of the Sale of Food and Drugs Act, 1875, in respect of a consignment of milk from a farmer to a purchaser it was proved that the milk sold was deficient in fat to the extent of 26 per cent., and therefore contained less than the minimum quantity of fat fixed by the Sale of Milk Regulations, 1901. Evidence was also given and it was admitted that another consignment of the same morning's milk from the same cows shewed on analysis fat 3.1 per cent. (being in excess of the minimum), and the morning's milk from the same cows seven days later shewed on analysis a deficiency of 3 per cent. only. The justices were of the opinion that although the sample, the subject of the summons, was not of the nature, substance, and quality of the article contracted to be sold, yet the deft. had not tampered with the milk, and the milk was as it came from the cows. They dismissed the summons:—

*Held*, that the case must be remitted to the justices to convict the deft., unless further evidence were called before them bearing upon the question whether the difference in the quantities of fat in the two consignments was consistent with ordinary milking. *MARSHALL v. SKETT* - Div. Ct. 11 L. G. R. 259; 23 Cox, C. C. 435; 108 L. T. 1001; 77 J. P. 173; 29 T. L. R. 152

**Prejudice of Purchaser.**

*Sale to prejudice of the purchaser—Added water—Certificate of analysis undisputed—Particular knowledge of justices as to causes of deficiency in milk solids—Trivial offence—Justices acting on their own knowledge—Dismissal of summons on ground of triviality—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

*PRESTON v. REDFERN* - Div. Ct. 10 L. G. R. 717; 23 Cox, C. C. 166; 107 L. T. 410; 76 J. P. 359; 28 T. L. R. 435

*Sale to prejudice of the purchaser—Cream—*

**ADULTERATION (Prejudice of Purchaser)—**  
*continued.*

*Preservative—Notice in shop—Preservative injurious to health—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

WILLIAMS v. FRIEND Div. Ct. [1912] 2 K. B. 471; 81 L. J. (K. B.) 756; 10 L. G. R. 494; 23 Cox, C. C. 86; 107 L. T. 98; 76 J. P. 301

*Sugar—Demerara sugar—Coloured Mauritius sugar—Place of origin—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.*

The respondent was summoned under s. 6 of the Sale of Food and Drugs Act, 1875, for selling as "Demerara sugar" crystallized cane sugar grown in Mauritius and coloured with an organic dye. Evidence was given that the sugar was equal to the best West Indian cane sugar and that the public expect under the designation "Demerara sugar" a yellow crystallized cane sugar without reference to its origin. The magistrate found that "Demerara sugar" had become a generic term referring to a process and not to a place, and he dismissed the summons.

*Held*, that although the sugar was not grown in Demerara, yet as it was "Demerara sugar" in every other respect, the magistrate's decision must be affirmed. ANDERSON v. BRITCHER

Div. Ct. 30 T. L. R. 78

**Warranty.**

*Place where warranty given—Omission to serve analyst's certificate with summons—Jurisdiction—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 19, sub-s. 2; s. 20, sub-s. 6.*

Case stated by justices of Warwickshire, sitting at Nuneaton.

The appellants, vinegar brewers in London, having received an order for vinegar from one Farr, a retail grocer in Nuneaton, in the county of Warwick, sent the vinegar in casks, to each of which was attached a label bearing the words "Guaranteed pure malt vinegar." They also at the same time sent an invoice of the vinegar containing a similar warranty of purity. An inspector under the Sale of Food and Drugs Acts purchased a portion of the vinegar from Farr, and upon analysis it proved to be adulterated. An information against Farr, under s. 6 of the Sale of Food and Drugs Act, 1875, for having sold the vinegar not being of the nature, substance, and quality demanded by the purchaser, was heard before the justices at Nuneaton and was dismissed on proof by Farr that he bought the vinegar with a written warranty of purity from the appellants. An information was then laid before the same justices against the appellants under s. 20, sub-s. 6, of the Sale of Food and Drugs Act, 1899, for having given to Farr a false warranty in writing. No copy of the certificate of the analyst was served upon the appellants with the summons. At the hearing of the information the appellants did not at once take objection to the jurisdiction of the justices, but procured the hearing to be adjourned in order that the vinegar might be further analysed by the officials of Somerset House. At the resumed hearing they took objection to the jurisdiction on the grounds (1.) that the warranty was not given within the county of Warwick, but in London, where the

**ADULTERATION (Warranty)—continued.**

labels were affixed to the casks and where the invoice was posted, and (2.) that no copy of the analyst's certificate had been served with the summons in accordance with s. 19, sub-s. 2, of the Sale of Food and Drugs Act, 1899. The justices overruled both objections and convicted the appellants.

The Court held (1.) that whether the appellants could also have been prosecuted in London or not, as to which they expressed no opinion, the justices at Nuneaton had jurisdiction to hear the charge, as the offence of giving the false warranty "to the purchaser" was not complete until it reached the purchaser in Nuneaton; and (2.) that the omission to serve the analyst's certificate with the summons was not a matter which went to the justices' jurisdiction, but was an informality in procedure which could be waived, and was waived by the appellants in procuring the hearing to be adjourned. They accordingly dismissed the appeal. GRIMBLE & Co. v. PRESTON

Div. Ct. [1913] W. N. 340; 30 T. L. R. 119

*Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25—Milk.*

The appellant, being charged under the Sale of Food and Drugs Acts with selling milk, that was not of the nature, substance, and quality of the article demanded by the purchaser, proved that the milk had been bought by him from a co. under a written agreement and had been sold by him in the same state as when it was purchased. The agreement provided that "the co. hereby warrants each and every consignment of milk delivered under this contract to be pure genuine new milk with all its cream according to the conditions of the Food and Drugs Act," and that "no responsibility is taken by the co. after delivery other than under the Food and Drugs Act," and that for all other purposes the buyer must satisfy himself at the time of delivery that the milk was pure, and that he should not be entitled to make any claim against the co. for damages in respect of milk accepted by him:—

*Held*, that the agreement constituted a good warranty within s. 25 of the Sale of Food and Drugs Act, 1875, and that the appellant was, therefore, entitled to be discharged from the prosecution.

Wilson v. Playle (1903) 88 L. T. 554, followed. PLOWRIGHT v. BURRELL - Div. Ct. [1913] 2 K. B. 362; 82 L. J. (K. B.) 571; 108 L. T. 1006; 11 L. G. R. 457; 23 Cox, C. C. 438; [1913] W. N. 108; 77 J. P. 245; 29 T. L. R. 398

*Sending copy of warranty—Prosecution—Defence of written warranty—Obligation to "send" copy of warranty within seven days—Document sent by post on seventh day—Delivery of document after the seven days—Sufficiency—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 20, sub-s. 1.*

RETAIL DAIRY CO., LD. v. CLARKE - Div. Ct. [1912] 2 K. B. 388; 81 L. J. K. B. 845; 10 L. G. R. 547; 23 Cox, C. C. 6; [1912]

W. N. 118; 76 J. P. 225

**ADULTERATION (Warranty)—continued.**

*Written warranty—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 25.*

**JACKLING v. CARTER** - Div. Ct. 10 L. J. G. R. 632; 23 Cox, C. C. 54; 107 L. T. 21; 76 J. P. 202

**ADULTERY.**

*See* DIVORCE.

**ADVANCES**—Whether advances to appointees valid — Release of life interest in advances — Whether life interest forfeited.

*See* SETTLEMENT—Appointment.

**ADVOWSON**—Proceeds of sale—Estate duty—Settlement estate duty.

*See* REVENUE—Estate Duty.

**AFFIDAVIT—Mandamus.**

*See* MANDAMUS.

— Penal action.

*See* PARLIAMENT—House of Commons.

**AFFIDAVIT OF DOCUMENTS.**

*See* DISCOVERY.

**AFFIDAVITS**—Practice—Taking affidavits off the file—Destroying affidavits.

On Nov. 27, 1912, an order was made in chambers by the judge directing "that all affidavits in this matter be taken off the file and handed to Messrs. Valpy, Peckham & Chaplin, the solicitors for the applicant, and that they be at liberty to destroy the same."

On presentation of this order to the chief of the Filing Department of the Central Office he informed the applicant's solicitors that the practice on taking affidavits off the file was to put them, together with all office copies (which must be brought in for the purpose), into a separate cupboard or box, and at the end of six months to destroy them. He took the affidavits off the file and put them away, but declined to carry out the order further or otherwise.

Neville J. said that he was not aware of any practice in the Filing Department overriding the jurisdiction of the Court. The Court had complete jurisdiction over its own records, and he directed the order to be amended as follows: "that all affidavits filed in this matter be forthwith taken off and destroyed, with all office copies thereof, in the presence of the solicitors for the applicant."

The order in this amended form was duly carried out in the Filing Department. *In re F—, AN INFANT* - Neville J. [1913] W. N. 4

**AFFREIGHTMENT** — Ship — Bill of lading — Exceptions — Liability for unmarked goods—Commixtio.

*See* SHIPPING—Bill of Lading.

**AFTER-ACQUIRED PROPERTY**—Covenant to settle.

*See* SETTLEMENT.

**AGENT**—Negligence—Breach of duty—Solicitor and bank agent.

*See* SCOTTISH LAW.

**AGENT—continued.**

— Of necessity—Sale by railway—Carriage of goods — Strike of railway company's servants—Perishable goods.

*See* RAILWAY—Carriage of Goods.

— Patent agent.

*See* PATENT.

— Principal and.

*See* PRINCIPAL AND AGENT.

— Shipping agent—Sale of cargo and payment of claims—Balance in hands of agent—Trust—Express Trust.

*See* LIMITATIONS, STATUTES OF — Trust.

**AGGREGATION**—Death duties.

*See* AUSTRALIA.

**AGREEMENT.**

*See* CONTRACT.

**AGREEMENT TO FINANCE.**

*See* INDIA—Practice.

**AGRICULTURAL DITCH** — Sewage farm — Nuisance — Discharge of sewage on private land — Smell — Injunction — Damages.

*See* LOCAL GOVERNMENT—Drainage.

**AGRICULTURAL HOLDINGS ACT, 1908.**

*See* LANDLORD AND TENANT—Agricultural Holdings and SETTLED LAND—Improvements.

**AGRICULTURAL IMPROVEMENTS.**

*See* LANDLORD AND TENANT—Agricultural Holdings and SETTLED LAND—Improvements.

**AIR**—Light and.

*See* LIGHT AND AIR.

**ALBERTA**—Laws of.

*See* CANADA—Alberta.

**ALIMENT**—Decree for—Desertion by father.

*See* WORKMEN'S COMPENSATION—Dependants.

**ALLOWANCE.**

*See* DIVORCE.

**ALTERATION** — Building scheme — Alteration in character of district.

*See* COVENANT.

— Deed.

*See* DEED.

**ALTERNATIVE REMEDY**—Water rate.

*See* LIMITATIONS, STATUTES OF — Special Periods of Limitation.

**AMBIGUITY** — Will — Misdescription — Latent ambiguity—Falsa demonstratio.

*See* WILL—Misdescription.

**AMENDMENT**—Judgment in default of appearance—Judgment for amount in excess of sum actually due—Setting aside.  
See JUDGMENT.

*Parliament—Penalties—Common informer—Action for sitting and voting in Parliament when disqualified—Action based on wrong statute—Application to amend—Discretion of judge.*

The plt. as a common informer brought an action for penalties under the statute 22 Geo. 3, c. 45, which was applicable only to the Parliament of Great Britain. He alleged that the defts. had sat and voted in the House of Commons when he was disqualified for so sitting and voting. Application having been made to amend by adding the right statute:—

*Held* that, the plt. having based his claim for penalties on the wrong statute, the discretion of the Court to amend ought not to be exercised in favour of a common informer suing for penalties.  
**BURNETT v. SAMUEL.** - Scrutton J.  
109 L. T. 630; 29 T. L. R. 583

**FORBES v. SAMUEL (No. 2)** - Scrutton J.  
[1913] W. N. 177; 29 T. L. R. 544

*Pleading—Action against corporation—Application for leave to plead the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61)—Application made at the eleventh hour—Circumstances in which application refused.*

The plt. claimed damages from the defts. corporation for injury done to a statue. Before issuing the writ in May, 1912, the plt.'s solicitor intimated to the defts. that he was issuing it at the time he did in view of the Public Authorities Protection Act, 1893. Shortly before the hearing, namely, on Feb. 17, 1913, the defts. applied in chambers for leave to amend their points of defence by pleading the Act. The question was reserved for the judge at the trial. Upon application to amend the trial, the question was reserved until after verdict found. The jury found for the plt.:—

*Held*, that in the circumstances the application was too late, and that, in any event, it would only have been granted upon the defts. paying the plt.'s costs. **ARONSON v. LIVERPOOL CORPORATION** - Pickford J. 77 J. P. 176; 29 T. L. R. 325

*Pleading—Joinder of causes of action—Action by foreign company for balance of account—Application by defendants to join claim for damages for libel to counter-claim.*

The plts., a Canadian co., sued the defts. claiming for losses and balance of account under an agreement of re-insurance. The defts. put in a defence, and counterclaimed for rescission and for damages for breach of contract. They afterwards applied for leave to add to their counter-claim a claim for damages for libel:—

*Held*, that this application must be refused.  
**FACTORIES INSURANCE CO., LD. v. ANGLO-SCOTTISH GENERAL COMMERCIAL INSURANCE CO., LD.** - - - C. A. 29 T. L. R. 312

*Writ—Practice—No title at the date of issue of writ—Subsequent acquirement of title—Amendment of writ.*

A. B., believing that X. died intestate, took out administration intestate to him, and com-

**AMENDMENT**—*continued.*

menced an action as such administrator against C. D. C. D., who had been aware that X. left a will, appointing him executor, declared that fact for the first time in his defence, and thereupon A. B. took out administration with the will annexed (C. D. having renounced), and sought to amend the pleadings accordingly:—

*Held*, that A. B.'s application must be refused, as at the date of the issue of the writ she had no title to sue. **CREED v. CREED**

**Barton J. [1913] 1 L. R. 48**

**ANCIENT LIGHTS.**

See LIGHT AND AIR.

**ANIMAL**—Dangerous animal—Horse and carriage hired by husband—Vicious horse—Injury to wife.  
See NEGLIGENCE.

**ANIMALS**—Cruelty to.

See CRIMINAL LAW.

**ANNUITY**—Will—Legacy on release of annuity under a settlement—Deficiency of assets—Abatement.  
See WILL—Legacy—Abatement.

**ANTICIPATION**—Restraint on.

See DIVORCE—Costs.

**APPEAL.**

*Bankruptcy.* See below, Notice and BANKRUPTCY—Discharge.

*Case Stated.* See JUSTICES.

*Contempt of Court.* See DIVORCE—Hearing in Camera.

*County Court.* See below, Court of Appeal—Time.

*Court of Appeal, col. 15.*

*Court of Criminal Appeal.* See CRIMINAL LAW.

*Criminal Cause or Matter.* See DIVORCE—Hearing in Camera.

*Divisional Court, col. 16.*

*Divorce.* See DIVORCE.

*Ecclesiastical Law.* See ECCLESIASTICAL LAW.

*Finance Act, 1910.* See REVENUE—Mineral Rights Duty.

*House of Lords, col. 18.*

*Justices.* See JUSTICES.

*Licensing Acts.* See LICENSING ACTS

*Local Government Board.* See LOCAL GOVERNMENT.

*Master, col. 19.*

*Notice, col. 19.*

*Pauper.* See above, Divisional Court

*Poor Rate.* See RATES.

*Railway and Canal Commission, col. 19.*

*Registration.* See PARLIAMENT.

*Revenue.* See REVENUE.

**APPEAL—continued.**

*Workmen's Compensation. See WORKMEN'S COMPENSATION—Appeal.*

**Bankruptcy.**

*See below, Notice and BANKRUPTCY—Discharge.*

**Case Stated.**

-- Non-service of notice of appeal and case on respondents—Jurisdiction to hear case. *See JUSTICES.*

**Contempt of Court.**

-- Criminal cause or matter—Committal. *See DIVORCE—Hearing in Camera.*

**County Court.**

*See below, Court of Appeal—Time.*

**Court of Appeal.**

*Action tried in Chancery Division with witnesses—Form of order—Appeal—Schedule of evidence—Action against two defendants—Submission to judgment at trial by one defendant—Dismissal of action as against other defendant—Evidence to be included in schedule—Oral and documentary evidence—Names of witnesses—R. S. C., Order LXII., r. 14c.*

Where after the trial of an action in the Chancery Division with witnesses the judgment is appealed against, the schedule of evidence required by Order LXII., r. 14c, is a complete schedule of the evidence used at the trial and not merely a schedule of the evidence relative to the particular point under appeal. The schedule should contain a list of the documents used together with the names of the witnesses examined, the object of the rule being to put in a separate document, where there is an appeal, the evidence which under the former practice was entered in the body of the order appealed from.

*JOHN BRINSMEAD & SONS, LD. v. BRINSMEAD Warrington J. [1913] 1 Ch. 492; 82 L. J. (Ch.) 305; 30 R. F. C. 489; 108 L. T. 601; [1913] W. N. 105; 57 S. J. 478*

*Assessment of damages by a Master—Appeal from Master—Court to which appeal lies—R. S. C., Order XXXVI., r. 57.*

In a case where there had been a reference of the amount of damages to a Master under Order XXXVI., r. 57, and notice of appeal to the C. A. against his assessment of the damages had been given:—

The C. A. were of opinion that an appeal lay from his assessment of the damages to that Court direct, and, therefore, gave leave to enter the appeal. *DUNLOP PNEUMATIC TYRE Co. v. NEW GARAGE AND MOTOR Co. - C. A. [1913] 2 K. B. 207; 82 L. J. (K. B.) 605; 108 L. T. 361; [1913] W. N. 79; 29 T. L. R. 344; 57 S. J. 357*

-- Criminal cause or matter.

*See DIVORCE—Hearing in Camera.*

-- Inferences of fact—Power of Court of Appeal to draw—Agricultural holdings.

*See LANDLORD AND TENANT—Agricultural Holdings.*

**APPEAL (Court of Appeal)—continued.**

*Order declaring priorities and for foreclosure or sale by Court of Appeal—Appeal to House of Lords—Enlargement of time for redemption—Application to Court of first instance—R. S. C., Order LXIV., r. 7.*

An order of the C. A. reversed in favour of the plt. the order of the Court below on a question of priorities, and went on to make a complete decree for an account and for redemption on payment by the defts. within a fixed time, and in default of payment for sale by the plt. out of Court and application of the proceeds of sale in payment of the amount due to him and costs. The defts., who intended to appeal to the House of Lords, applied in the Court of first instance for an extension of the time fixed for redemption:—

*Held*, that the application was properly made to the Court of first instance and not to the C. A.

*Hamill v. Lilley (1887) 19 Q. B. D. 83, and The Khedive (1879) 5 P. D. 1, distinguished. MANKS v. WHITELEY - Sargent J. [1913] 1 Ch. 581; 82 L. J. 267; 108 L. T. 450; [1913] W. N. 82; 57 S. J. 391*

-- Railway and Canal Commission.

*See below, Railway and Canal Commission.*

*Time—County court action—Appeal from county court—Appeal from judgment of Divisional Court on such appeal—Final order—"Matter not being an action"—R. S. C., Order LVIII., r. 15—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100.*

An appeal from the order of a Div. Ct., dismissing an appeal from a final judgment in a county court action, is an appeal from a final order in an "action" within the meaning of Order LVIII., r. 15, and therefore such an appeal may be brought within the period of three months from the order of the Div. Ct. *JOHNSON v. REFUGE ASSURANCE Co., LD. C. A. [1913] 1 K. B. 259; 82 L. J. (K. B.) 411; 108 L. T. 242; [1913] W. N. 296; 29 T. L. R. 127; 57 S. J. 128*

-- Trade mark—Application for registration—Appeal from Comptroller-General—Grounds of objection.

*See TRADE MARK—Registration.*

**Court of Criminal Appeal.**

*See CRIMINAL LAW.*

**Criminal Cause or Matter.**

*See DIVORCE—Hearing in Camera.*

**Divisional Court.**

*Appeal from chambers—"Practice and procedure"—Order directing solicitor to pay money—Non-payment—Application for leave to issue writ of attachment—Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-s. 4.*

*Appeal from Bailhache J. at chambers.*

A writ was issued in this action in the K. B. D. on Feb. 11, 1913, by a firm of solicitors, Messrs. Hodgkinson & Crowe. On Feb. 25, on the application of the plt., an order was made by

**APPEAL (Divisional Court)—continued.**

Master Archibald that the action be stayed and that costs be paid to the plt. by Messrs. Hodgkinson & Crowe, on the ground that the writ had been issued by them without the authority or knowledge of the plt.

An appeal from this order was, on Mar. 11, dismissed with costs against Messrs. Hodgkinson & Crowe by Bucknill J. The costs were taxed, but were not paid.

On April 24 Bailhache J. made an order on the plt.'s application that the plt. be at liberty to issue a writ of attachment against Edward Dixon Hodgkinson, "on the ground that he being at the date of the orders" of Feb. 25 and Mar. 11 "a solicitor of the Supreme Court and a member of the firm of Hodgkinson & Crowe, had not complied with" the above orders for the payment of costs by the said firm, and "on the ground that such default in compliance with the said orders is a default made by an attorney or solicitor in payment of costs ordered to be paid for misconduct as such, and (or) is a default in payment of money ordered to be paid by an attorney or solicitor in his character as an officer of the Court making the orders, within the meaning of the Debtors Act, 1869."

Hodgkinson applied to the Div. Ct. against this order.

A preliminary objection was taken that the appeal was on a matter of practice and procedure within the meaning of s. 1, sub-s. 4, of the Judicature Act, 1894, and that the appeal, therefore, lay direct to the C. A.

The Court held, on the authority of *In re Marchant* [1908] 1 K. B. 998, that the appeal was rightly brought to the Div. Ct. The contention on behalf of the appellant, Hodgkinson, being that at the date of the orders he was not a member of the firm of Hodgkinson & Crowe, the Court sent the case back to Bailhache J. for him to make further findings of fact. **HAXBY v. WOOD ADVERTISING AGENCY, LD. AND ANOTHER** - Div. Ct. [1913] W. N. 331

*Appeal from county court—Hearing before two judges—Difference of opinion—Withdrawal of judgment of junior judge.*

The defts. Moore appealed from the judgment of a county court judge. The appeal was heard on Nov. 6 and 7 before Bray and Lush JJ., when judgment was reserved. Judgment was delivered on Nov. 25, when Bray J. was of opinion that the defts. Moore were entitled to judgment and that the appeal should be allowed, but Lush J. was of opinion that the judgment of the county court judge was right, except upon one point as to costs (see [1913] W. N. 349), and that the appeal ought to be dismissed. Lush J., as the junior judge, withdrew his judgment, and the appeal was allowed.

Subsequently, on Nov. 28, an application was made to the Court on behalf of the plt. to reconsider the matter, the order of the Court not having then been drawn up. The Div. Ct. held that Lush J. had power to withdraw his judgment.

*Ellis v. Banyard* (1911) 106 L. T. 51, referred to.

Application refused. **POULTON v. MOORE AND OTHERS** (No. 2) - Div. Ct. [1913] W. N. 360; 30 T. L. R. 155; 58 S. J. 156

**APPEAL (Divisional Court)—continued.**

*Application by defendant for leave to appeal in forma pauperis—Opinion of counsel—R. S. C. Order XVI., r. 23.*

A deft., against whom judgment has been given in the Court of first instance and who applies to the Div. Ct. for leave to appeal against that judgment in forma pauperis, must be treated as being in the position of a person desirous of "suing" in forma pauperis within the meaning of Order XVI., r. 23, and must therefore produce an opinion of counsel that he has reasonable grounds for proceeding.

**MERRIMAN v. GEACH** - Div. Ct.  
[1913] 1 K. B. 37; 82 L. J. (K. B.) 87;  
107 L. T. 703; 57 S. J. 164

— Contempt of Court—Hearing in camera.

*See* **DIVORCE—Hearing in Camera.**

**Divorce.**

*See* **DIVORCE—Desertion and Hearing in Camera.**

**Ecclesiastical Law.**

— Clergy Discipline Act, 1892, Criminal suit under—Appeal in matter of law—Remission of cause—Practice—Costs.  
*See* **ECCELESIASTICAL LAW.**

**Finance Act, 1910.**

*See* **REVENUE—Mineral Rights Duty.**

**House of Lords.**

*Costs—Appeal to House of Lords—Issues decided against appellant—Appeal as to one issue only—Set-off of costs ordered to be paid at trial—Motion to make Lords' decree an order of High Court.*

On a motion to make a decree of the House of Lords an order of the High Court, when the decree appears on its face to deal with all the costs of the action, the Court has jurisdiction to set off from the costs payable to the successful appellant under the decree the costs of issues upon which he failed at the trial and which he did not raise upon the appeal. **DEELEY v. LLOYDS BANK** - C. A. 57 S. J. 158

— Order declaring priorities and for foreclosure or sale by Court of Appeal—Appeal to House of Lords—Enlargement of time for redemption—Application to Court of first instance.

*See* above, **Court of Appeal.**

*Private Acts of Parliament—Copies of to be supplied.*

It has been laid down by the H. L. on more than one occasion that where in an appeal to the House reference is made in the record to a private Act of Parliament, copies of the Act should be supplied to their Lordships. **PRACTICE NOTE**  
[1913] W. N. 367

**Justices.**

*See* **JUSTICES—Case Stated.**

**Licensing Acts.**

*See* **LICENSING ACTS—Licence.**

**APPEAL**—*continued*.**Local Government Board.**

- Powers and duties—Appeal from local authority.

See LOCAL GOVERNMENT.

**Master.**

- Assessment of damages by — Appeal from Master—Court to which appeal lies.

See above, **Court of Appeal**.

- Order remitting action of contract to county court—Appeal—Absence of jurisdiction in High Court after remittal of action to county court.

See COUNTY COURT—Remitted Action.

**Notice.**

*Bankruptcy — Appeal against making of receiving order—Stay of proceedings—Official receiver not served with notice of appeal—Appeal heard de bene esse—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 104, sub-s. (d)—Bankruptcy Rule 134, Order LVIII., rr. 2, 15.*

Notice of appeal to the C. A. or to the Div. Ct. in bankruptcy against the making of a receiving order must in every case, whether proceedings under the order have been stayed or not, be served upon the official receiver within the time limited by the rules for service on the petitioning creditor. But in special circumstances the Court may extend the time for appealing in order that the official receiver may be served, or may hear the appeal de bene esse, and if necessary then adjourn the matter for a like purpose. *In re SLEATH, Ex parte LOTUS SHOE Co.* — Div. Ct. 109 L. T. 222

*Interim order to prevent prejudice—Practice—Application under s. 52 of the Judicature Act, 1873 (36 & 37 Vict. c. 66)—Notice of original motion to one judge of the Court of Appeal.*

Where an application is made under s. 52 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), a notice of motion stating the nature of the application should be sent, together with the notice of appeal, to the Lord Justice to whom the application is made, and such notice of motion should also be served on the other side, together with the notice of appeal. *In re THE X. L. ELECTRIC CO., LD. WIENER v. THE CO.* C. A. 57 S. J. 792

**Pauper.**

See above, **Divisional Court**.

**Poor Rate.**

- Appeal to quarter sessions—Valuation list—Notice of objection to, after approval by assessment committee.

See RATES—Appeal.

**Railway and Canal Commission.**

*Reference relating to telephones—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 17, sub-ss. 1, 2, and 5—Telegraph (Arbitration) Act, 1909 (9 Edw. 7, c. 20), ss. 1 and 2.*

An appeal lies to the H. L. from a decision of the C. A. upon the question whether they have jurisdiction to entertain an appeal from the Railway and Canal Commission under s. 17 of the Railway and Canal Traffic Act, 1888.

**APPEAL (Railway and Canal Commission)**—*continued*.

By the Railway and Canal Traffic Act, 1888, the Railway and Canal Commission, which as regards England consisted of one ex officio and two appointed Commrs., was established as a Court of record, and an appeal lay from the Commission to the C. A. except upon questions of fact and locus standi.

By an agreement under seal made in 1905 a telephone co. agreed to sell to the Postmaster-General all the plant in use by the co. on Dec. 31, 1911, and any dispute as to the value of the plant was to be referred to the Railway and Canal Commission, if they should be authorized to determine it. The Telegraph (Arbitration) Act, 1909, enacted (s. 1) that any difference between the Postmaster-General and any body or person under any agreement relating to telephones should, if the parties agreed, be referred to the Railway and Canal Commission, who were bound to determine it; and (s. 2) that all proceedings relating thereto should be conducted by the Commission in the same manner as any other proceeding was conducted by them under the Railway and Canal Traffic Acts, 1873 and 1888, and that any order of the Commission on any such difference should be enforceable as any other order of the Commission, provided (inter alia) that any such matter of difference might, in certain events, be heard and determined by the two appointed Commrs. A difference having arisen as to the value of the plant, the Commission, at the request of the parties, fixed and determined the value:—

*Held*, that the reference to the Commission under the Telegraph (Arbitration) Act, 1909, was a reference to them as a Court of record and not as arbitrators, and that an appeal lay on a point of law to the C. A.

Decision of the C. A. [1913] 2 K. B. 614, affirmed. NATIONAL TELEPHONE CO., LD. v. HIS MAJESTY'S POSTMASTER-GENERAL

H. L. (E.) [1913] A. C. 546; 82 L. J. (K. B.) 1197; 109 L. T. 562; [1913] W. N. 219; 29 T. L. R. 637; 57 S. J. 661

**Registration.**

See PARLIAMENT.

**Revenue.**

- Mineral rights duty—Assessment—Decision of referee.

See REVENUE—Mineral Rights Duty.

**Workmen's Compensation.**

See WORKMEN'S COMPENSATION — Appeal.

**APPEARANCE**—Judgment in default of appearance—Judgment for amount in excess of sum actually due—Setting aside—Amendment.  
See JUDGMENT.

**APPOINTMENT**—Company—Articles of association—Board of directors—Powers—Appointment of managing director—Power to revoke appointment.  
See COMPANY—Director.

- Power of.

See POWER OF APPOINTMENT.

**APPORTIONMENT**—Pilot—Negligence of—  
Limitation of pilot's liability—Power  
to apportion among claimants.  
*See SHIPPING—Pilot.*

— Private street works—Provisional apportion-  
ment—Premises outside the district of  
the urban authority.  
*See LOCAL GOVERNMENT—Streets.*

— Tenant for life and remainderman—Pre-  
ference shares—Death of life tenant—  
*See SETTLED LAND—Capital or Income.*

*Will—Bequest of shares or of money to  
buy the shares—Shares in private company—  
Dividend, whether apportionable—“Public  
company”—Apportionment Act, 1870 (33 & 34  
Vict. c. 35), ss. 2, 5—Companies (Consolidation)  
Act, 1908 (8 Edw. 7, c. 69), s. 121.*

The term “private company” in s. 121 of  
the Companies (Consolidation) Act, 1908, is only  
a convenient way of describing, for the purposes  
of that Act, a particular class of cos. subject  
to the Act; and a co. incorporated under the  
Companies Acts either before or after that Act,  
and so constituted, either originally or by  
subsequent alteration of its articles, as to be a  
private co. within the meaning of that expression  
in s. 121 of the Act, is nevertheless a “public  
co.” for the purposes of the Apportionment Act,  
1870.

A co., incorporated in 1899 under the Com-  
panies Acts, 1862 to 1898, passed special resolu-  
tions in 1907 altering its articles of association so  
as to be a private co. as defined by s. 37 of the  
Companies Act, 1907, which enactment is re-  
pealed and reproduced by the Companies (Con-  
solidation) Act, 1908, s. 121. G. and his son  
held ordinary shares in the co. One of the  
articles of the co. provided that, on the death  
of G., his son should have the right to purchase  
so many ordinary shares of G. as would make  
up the son's holding to 667 ordinary shares; and  
another article provided that H. should have the  
right to purchase so many of G.'s ordinary  
shares as the son should not purchase under the  
previous article.

G. died and by his will bequeathed so many of  
his ordinary shares in the co. to his son as would  
make up the son's holding to 667 shares, but if  
any provision in the articles of the co. might so  
operate as to prevent the said specific bequest  
taking effect, then in lieu thereof he bequeathed  
to his son a legacy equal in amount to the  
purchase-money of so many of his (the testator's)  
ordinary shares as the son should be entitled to  
purchase under the aforesaid article. The co.  
paid substantial dividends:—

*Held*, that the bequest to the son did not  
operate as a specific gift of shares but as a gift  
of money to buy the shares, and therefore that  
the Apportionment Act, 1870, did not apply to  
the accruing dividend on the shares. *In re*  
*WHITE. THEOBALD v. WHITE*  
Neville J. [1913] 1 Ch. 231; 82 L. J. (Ch.)  
149; 108 L. T. 319; [1913] W. N. 4;  
57 S. J. 212

**APPROPRIATION**—Trust for sale—Difficulty of  
realization—Proposed appropriation in

**APPROPRIATION**—*continued.*

specie—Unauthorized investments—  
Jurisdiction of Court.  
*See SETTLEMENT—Trusts.*

— Trustee—Breach of trust—Appropriation of  
security by defaulting trustee to meet  
breach of trust—Declaration of trust.  
*See TRUSTEE.*

**ARBITRATION.**

*Appeal. See APPEAL.*

*Award, col. 22.*

*Building Contract, col. 22.*

*Coal Mines (Minimum Wage) Act, 1912.*  
*See MINES.*

*Railway and Canal Commission. See*  
*APPEAL.*

*Shipping. See SHIPPING.*

*Special Case, col. 24.*

*Stay of Proceedings, col. 24.*

*Umpire, col. 25.*

*Workmen's Compensation. See WORK-*  
*MEN'S COMPENSATION.*

**Appeal.**

— Railway and Canal Commission.  
*See APPEAL.*

**Award.**

*Award pending action—Bar—Contract—  
Corporation drainage works—Clause referring  
disputes to engineer of corporation—Award to be  
final and binding—Cancellation of contract—  
Action for damages—Reference of dispute to  
engineer—Award made while action pending—  
Effect of award—Arbitration Act, 1889 (52 &  
53 Vict. c. 49), s. 4.*

*DOLEMAN & SONS v. OSSETT CORPORATION*  
C. A. [1912] 3 K. B. 257; 81 L. J. (K. B.)  
1092; 10 L. G. R. 915; [1912] W. N. 215;  
76 J. P. 457

*Specific question submitted to arbitrator—  
Award—Error in law—Application to set aside.*

If a specific question is submitted to an  
arbitrator and he answers it, the fact that the  
answer involves an erroneous decision in point  
of law does not make the award bad on its  
face so as to permit of its being set aside.

*Stimpson v. Emmerson* (1847) 9 L. T.  
(O.S.) 199, and *Adams v. Great North of  
Scotland Ry. Co.* [1891] A. C. 31, followed.  
*In re KING AND DUVEEN*—Div. Ct. [1913]  
2 K. B. 32; 82 L. J. (K. B.) 733; 108 L. T.  
844; [1913] W. N. 86

**Building Contract.**

*Arbitration clause—Reference to building  
owners' architect—Disqualification—Collusion—  
Payments to be made on certificate of architect—  
Improper delay in issuing certificate—Action  
for balance due under contract before issue of  
certificate.*

A building contract provided that the  
decision of the architect of the building owners  
on all matters in relation to the work should



**ARBITRATION (Building Contract)—continued.**

be final and that payments should be made on the certificate of the architect. The architect, under a misapprehension of his position, allowed his judgment to be influenced by the building owners and improperly delayed issuing his certificates in accordance with their instructions. After the completion of the work and the expiration of the period of maintenance the contractor sued the building owners for the final balance alleged to be due under the contract, but the final certificate was not issued until after the commencement of the action :—

*Held*, that the building owners were precluded from setting up as a defence to the action either that the issue of the certificate was a condition precedent to the bringing of the action or that the certificate was conclusive as to the amount of the claim.

Decision of the C. A. affirmed. **HICKMAN & Co. v. ROBERTS** **H. L. (E.) [1913] A. C. 229; 82 L. J. (K. B.) 678; 108 L. T. 436, n.**

*Arbitration clause—Reference to building owner's engineer—Disqualification—Dispute involving examination of engineer—Staying proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

Where a contractor executes works under a contract containing a provision for the reference of disputes to the engineer of the other party to the contract, and upon the settlement of the final account there arises a bona fide dispute of a substantial character between the contractor and the engineer involving a probable conflict of evidence between them, the fact that the engineer, without any fault of his own, must necessarily be placed in the position of judge and witness is a sufficient reason why the matter should not be referred in accordance with the contract; and the Court will therefore refuse to stay an action by the contractor for payment of the account.

Decision of the C. A. (28 T. L. R. 278) affirmed.

Whether, where the action embraces several items, all within the reference clause, as to some of which the arbitrator is disqualified from acting, the Court should allow the action to proceed as to these items and allow the remaining items to be referred, *quære*.

*Per Lord Parker of Waddington*: It is the practice of the Chancery Division to stay an action as to one matter in dispute and at the same time to allow it to proceed as to another, notwithstanding that both matters are within the reference, and in many cases that is a desirable course. **BRISTOL CORPORATION v. JOHN AIRD & Co.** **H. L. (E.) [1913]**

**A. C. 241; 82 L. J. (K. B.) 684; 108 L. T. 434; [1913] W. N. 89; 77 J. P. 209; 29 T. L. R. 360**

**Coal Mines (Minimum Wage) Act, 1912.**

— Ambiguous award—Declaratory judgment as to meaning of—Jurisdiction of Court.  
*See MINES—Coal Mines.*

**ARBITRATION—continued.****Railway and Canal Commission.**

— Reference—Telephone—Appeal.

*See APPEAL—Railway and Canal Commission.*

**Shipping.**

— Bill of lading—Damage to goods—Jurisdiction—Arbitration clause.

*See SHIPPING—Jurisdiction.*

**Special Case.**

*Application for arbitrator to state special case during arbitration—Arbitration Act, 1889.*

The question was raised in this case as to whether a special arbitrator appointed under the Woking Urban District Council (Basingstoke Canal) Act, 1911, should be directed to state a case to raise a point of law arising in the course of the arbitration :—

*Held*, that no real definite question had so clearly arisen between the parties as to justify calling upon the arbitrator to state a case. *In re WOKING U. D. C. (BASINGSTOKE CANAL) ACT, 1911. In re ARBITRATION ACT, 1889*

**Sargant J. 77 J. P. 321**

Reversed on another point **C. A. [1913] W. N. 346**

**Stay of Proceedings.**

*Agreement to refer disputes—Action in High Court—Application to stay proceedings—Questions of law requiring determination—Discretion of Court—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

To an application for a stay of proceedings under s. 4 of the Arbitration Act, 1889, on the ground that the contract in respect of which the action is brought contains a clause requiring that any dispute arising thereon shall be referred to arbitration, neither side to appear before the arbitrator by solicitor or counsel, it is no answer that the dispute will involve the determination of questions of law, inasmuch as such questions can be stated by the arbitrator for the opinion of the Court in the form of a special case.

Decision of Channell J. affirmed. **ROWE BROTHERS & Co., LD. v. CROSSLEY BROTHERS, LD.** **C. A. 108 L. T. 11; 57 S. J. 144**

— Building contract.

*See above, Building Contract.*

*County court—Submission to arbitration—Commencement of legal proceedings—Default summons—Notice of intention to defend—Application for stay—"Step in the proceedings"—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.*

The plts. had supplied the defts. with certain goods under a contract which contained a term that disputes between the parties should be submitted to arbitration. A sum of money being alleged to be due to the plaintiffs for goods so supplied, proceedings were taken in the county court for its recovery, and a default summons was served upon the defts., who filled up the slip attached to the summons giving notice of their intention to defend the action. The defts. subsequently applied to the learned

**ARBITRATION** (Stay of Proceedings)—*continued*.

judge for a stay of the action under s. 4 of the Arbitration Act, 1889. The section provides that: "If any party to a submission . . . commences any legal proceedings in any court against any other party to the submission . . . in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court . . . may make an order staying the proceedings." It was contended on behalf of the plts. that the statement by the defts. on the slip attached to the default summons of their intention to defend was a step in the proceedings, since it entitled them to raise any defence other than a special defence, of which notice must be given, and that, consequently, they were not entitled to apply for a stay of the proceedings. The learned judge gave effect to this contention and refused to stay the action:—

*Held*, that the giving notice of an intention to defend by filling up the slip attached to the default summons was merely the equivalent of entering appearance in the High Court, and that the defts. had not taken any step in the proceedings after appearance which disentitled them to apply for a stay. **AUSTIN & WHITELEY, LD. v. S. BOWLEY & SON**

Div. Ct. 108 L. T. 921; [1913] W. N. 153

**Umpire.**

*Refusal of arbitrators to appoint umpire—Application to Court to appoint—Practice—Parties—Service on arbitrators—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 5, 20.*

**TAYLOR v. DENNY, MOTT & DICKSON, LD.**

**H. L. (E.) [1912] A. C. 666; 82 L. J. (K. B.) 203; 107 L. T. 69; [1912] W. N. 186; 76 J. P. 417**

**Workmen's Compensation.**

*See WORKMEN'S COMPENSATION.*

**ARBITRATOR.**

*See ARBITRATION.*

**ARCHITECT**—Building contract.

*See ARBITRATION—Building Contract.*

**ARRANGEMENT**—Company.

*See COMPANY—Reduction of Capital and Shares and COMPANY—WINDING-UP—Reconstruction.*

**ARTICLES OF ASSOCIATION**—Company.

*See COMPANY.*

**ASSAULT**—Workmen's compensation.

*See WORKMEN'S COMPENSATION—Accident—Risk incidental to employment and Risk not incidental to employment.*

**ASSESSMENT**—Income tax.

*See REVENUE.*

**ASSETS**—Marshalling.

*See ADMINISTRATION—Legacy.*

**ASSIGNMENT**—Bankruptcy.

*See BANKRUPTCY—Assignment.*

— Damages for waste.

*See CHOSE IN ACTION.*

— Debt—Notice.

*See CHOSE IN ACTION.*

— Insurance of mortgage owned by a company—Condition—Policy—Insured company in liquidation—Power of liquidator to assign.

*See INSURANCE—Mortgage.*

— Interpleader—Judgment for a debt—Goods of judgment debtor taken in execution and sold—Claim by assignee of the debt to proceeds of sale.

*See COUNTY COURT—Interpleader.*

— Lease—Covenant to repair—Waste—Unassignability of right to damages for waste.

*See CHOSE IN ACTION.*

**ASSISTANCE, WRIT OF.**

*See TRUSTEE.*

**ASSURANCE.**

*See INSURANCE.*

**ATTACHMENT.**

*See CONTEMPT OF COURT and INDIA—Practice.*

**ATTENDANCE**—School.

*See SCHOOL—Attendance.*

**ATTORNEY**—Power of.

*See GIFT and PARTIES.*

**ATTORNEY-GENERAL**—Joinder of.

*See LOCAL GOVERNMENT—County Council.*

— Prosecution—Necessity of sanction of Attorney-General—Fraudulent trustee—Misappropriation of funds.

*See CRIMINAL LAW—Larceny Act, 1901.*

**AUCTION**—Sale of goods—Misleading catalogue

—Lot put up for sale—Mistake by bidder as to subject-matter.

*See SALE OF GOODS—Auction.*

**AUCTIONEER**—Set-off—Special property—Action for price of goods sold—Debt due from owner to purchaser.

**MANLEY & SONS, LD. v. BERKETT**

**Banks J. [1912] 2 K. B. 329; 81 L. J. (K. B.) 1232**

— Vendor.

*See BANKRUPTCY—Property divisible among Creditors.*

**AUSTRALIA**—New South Wales—Revenue—Stamp duties—New South Wales duties payable on death—Special power of appointment—Aggregation of estates—Rate at which duty chargeable—Stamp Duties Act, 1898 (Act 27 of 1898), s. 49, sub-s. 2 (A) (a)—Probate Duties (Amendment) Act, 1899 (Act 45 of 1899), Schedule—New South Wales Stamp Duties (Amendment) Act, 1904 (Act 24 of 1904), s. 21.

The effect of the New South Wales Stamp Duties (Amendment) Act, 1904, s. 21, is not to provide for any aggregation of estates for the

**AUSTRALIA—continued.**

purpose of determining the rate at which duty is chargeable under the Stamp Duties Act, 1898, s. 49, as amended by the Probate Duties (Amendment) Act, 1899; the estate of the person dying is for the purpose of duty a separate estate, and similarly each estate chargeable under the Stamp Duties Act, 1898, s. 49, sub-s. 2, is for that purpose a separate estate. **BRUNTON v. NEW SOUTH WALES COMM. OF STAMP DUTIES** P. C. [1913] A. C. 747; 108 L. T. 932; 29 T. L. R. 607

*Restraint of trade—Australian Industries Preservation Act, 1906 (Australian Commonwealth Acts, No. 9 of 1906), ss. 4, 7, 10, 15A—Contract or combination in restraint of trade—Monopoly—Intent to the detriment of the public—Construction—Evidence to establish offence.*

A contract in restraint of trade which is unenforceable at common law, or a combination in restraint of trade which, if embodied in a contract, would be unenforceable at common law, are neither of them necessarily "to the detriment of the public" within the meaning of the Australian Industries Preservation Act, 1906, ss. 4 and 7, and a party to a contract or combination of that character cannot, merely because he is a party thereto, be taken to have intended this detriment. In a prosecution under either of those sections the wrongful intent must be proved by proper evidence. For this purpose the prosecutor may tender proof that the evils against which the Act is directed were the natural and necessary consequence of the contract or combination, monopoly or attempt to monopolize, and that those evils have in fact ensued. He cannot plead the evidence upon which he hopes to establish wrongful intention and rely on s. 15A of the Act as rendering proof of what he pleads unnecessary.

The principles of the law as to monopolies and contracts in restraint of trade prior to the passing of the above Act considered. **ATT.-GEN. OF THE COMMONWEALTH OF AUSTRALIA v. ADELAIDE STEAMSHIP CO., LD.** - P. C. [1913] A. C. 781; 82 L. J. (P.C.) 139; 109 L. T. 258; 29 T. L. R. 743

— Superannuation—Appeal from New South Wales.

See **SUPERANNUATION**.

— Victoria, Appeal from—Negligence.

See **NEGLIGENCE—Malicious Act of Third Person**.

**AWARD.**

See **ARBITRATION—Award and WORKMEN'S COMPENSATION—Compensation—Arbitration**.

**BAILEE—Gratuitous.**

See **BAILEMENT**.

— Ship—Collision—Damage—Time charter—Sub-charter.

See **SHIPPING**.

**BAILEMENT—Pony left in custody of vendor—Injury caused to pony—Vendor unable to explain how injuries occurred—Liability of vendor.**

An agreement was made for the purchase of a pony by the plt. from the defts., and it was

**BAILEMENT—continued.**

arranged that the pony should be left in the custody of the defts. for some days. While the pony remained in the custody of the defts., it was injured, and the plt. claimed to recover damages in respect thereof. The defts. did not shew how the injuries were caused, or establish that they had taken reasonable care of the pony:—

*Held*, that the defts. were liable, inasmuch as they were, as gratuitous bailees, under an obligation to take such care of the pony as a reasonably prudent owner would take of his own property, and they had failed to shew that they had taken such care of the pony. **WIEHE v. DENNIS BROTHERS - Scrutton J. 29 T. L. R. 250**

**BALLOT**—Workmen's compensation—Contracting out—Scheme of compensation—Recertification.

See **WORKMEN'S COMPENSATION—Contracting-out Scheme**.

**BANK.**

See **BANKER**.

**BANK OF RIVER**—Public footway running along—Danger to public using footpath—Liability of owner of bank to repair. See **HIGHWAY—Repairs**.

**BANKER.**

*Agent and Client.* See **SCOTTISH LAW**.

*Bank Guarantee.* See **PRINCIPAL AND SURETY**.

*Books.* See **EVIDENCE**.

*Cheque, col. 28.*

*Customer.* See above, **Cheque**.

*Deposit of Securities, col. 30.*

*Agent and Client.*

— Negligence—Breach of duty—Solicitor and bank agent.

See **SCOTTISH LAW**.

*Bank Guarantee.*

— Principal and surety—Duty of bank to guarantor—Non-disclosure by bank to guarantor of suspicions concerning conduct of debtor—Whether guarantor discharged.

See **PRINCIPAL AND SURETY**.

*Books.*

See **EVIDENCE**.

*Cheque.*

*Cheque crossed "not negotiable" paid into account of customer—Customer not payee of cheque—Forged indorsement—Receipt of payment by bank for customer—Negligence of bank—Liability of bank—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 82.*

The plt., a stockbroker, had a manager R. who entered into speculations on the Stock Exchange on his own account in the name of D. for whom the plaintiff had done business. When the account shewed a balance in favour

**BANKER (Cheque)—continued.**

of D., cheques drawn in favour of D. and crossed "not negotiable" were placed by R. before the plt. who signed them. R. then forged D.'s signature and paid the cheques into his own account with the defts. who received payment of them and placed the proceeds to the credit of R.'s account, but made no inquiry before so doing. These cheques, which were usually for inconsiderable amounts, all of them except three being for sums under 30*l.*, were paid in at considerable intervals, nine of such cheques being paid into R.'s account in the course of two and a quarter years. Two of the cheques were signed per pro. the plt. Evidence was given by bankers that it was not uncommon for cheques of this description to be paid into the accounts of persons other than the payees of the cheques. In an action by the plt. to recover from the defts. the amounts of the nine cheques received by the defendants:—

*Held*, that the fact that the cheques were crossed "not negotiable" and drawn in favour of a person other than R. did not impose an obligation upon the bank to make inquiry before taking them so as to make the defts. guilty of negligence in receiving the cheques and crediting R.'s account with the proceeds.

*Held*, also, that the fact that two of the cheques were signed per pro. the plt. did not put the defts. upon inquiry as to the right of R. to pay the cheques into his own account, it merely operated as a notice that the person drawing the cheques had a limited right to sign the cheques.

*Morison v. London County and Westminster Bank* (1913) 18 Com. Cas. 137, considered and explained. *CRUMPLIN v. LONDON JOINT STOCK BANK, LD.* — *Pickford J.* 19 Com. Cas. 69; 30 T. L. R. 99

*Crossed cheque — Payment — Exchange of cheques — Ostensible authority — Estoppel — Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 79 — Straits Settlements (Settlement of Singapore).*

The appellants' cashier presented at the respondents' bank cheques drawn on the respondents in favour of the appellants and crossed generally; in exchange he was handed cheques for the same amounts drawn by the respondents upon other banks and crossed generally. The appellants had by their conduct held out their cashier as having authority to deal with the cheques in this way. The cashier fraudulently paid the cheques handed him by the respondents to his own banking account and misappropriated the proceeds:—

*Held*, that the cheques drawn on the respondents were paid by the cheques given in exchange within the meaning of the Bills of Exchange Act, 1882, s. 79, sub-s. 2, but that the appellants were estopped from denying the authority of their cashier to receive payment in that manner and were not entitled to recover damages. *MEYER & CO., LD. v. SZE HAI TONG BANKING AND INSURANCE CO., LD.*

P. C. [1913] A. C. 847; 57 S. J. 700

*Signature per pro. — Authority of agent — Liability of bank — Payments by agent of cheques*

**BANKER (Cheque)—continued.**

*into his private account — Liability of bank — Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 25, &c.*

In 1888 the plt. gave the National Provincial Bank written authority to pay and honour all cheques drawn by A., his manager, or purporting to be drawn by him per pro. the plt., or on his account. In 1907 A. opened a private account with the defts., and in fraud of the plt. he drew and indorsed cheques on the National Provincial Bank, in his own name per pro. the plt., and payable to himself, and paid these into that private account. The cheques were crossed specially to the deft. bank. In 1908 the plt. discovered that A. had apparently been defrauding him, but he accepted an explanation given by A., and allowed him to continue in his employment, binding him not to incur any liabilities except with his (the plt.'s) sanction and except in the ordinary course of business of the firm. The plt. was not aware of the fact that A. had opened an account in his own name. In an action by the plt. to recover from the defts. the amount of the cheques wrongfully paid by A. into his account with them:—

*Held*, (1.) that the signature per pro. of A. on the cheques being notice to the defts. that A. had only a limited authority, it was incumbent on them to ascertain from the plt. whether A. in so signing was acting within the terms of his authority, and as they had not made such inquiries, they had been negligent in dealing with the cheques; (2.) that on the facts the plt. had not ratified the acts of A.; (3.) that the defts. had not proved facts which entitled them to say that the plt. was estopped from repudiating the authority of A.; and (4.) that the plt. was entitled to recover the amount of the cheques in question from the defts. *MORISON v. LONDON COUNTY AND WESTMINSTER BANK, LD.*

*Coleridge J.* 18 Com. Cas. 137; 108 L. T. 379; [1913] W. N. 84; 29 T. L. R. 342; 57 S. J. 427

**Customer.**

*Cheque — Forgery — Negligence of customer — Pass-book — Account stated.*

The fact that the customer of a bank does not examine his pass-book, when it is periodically returned to him, does not preclude him from recovering from the bank amounts paid in respect of cheques the signatures to which were forged, although such cheques were debited to his account in the pass-book.

*Keppitigalla Rubber Estates, Ltd. v. National Bank of India* [1909] 2 K. B. 1010, followed. *WALKER AND ANOTHER v. MANCHESTER AND LIVERPOOL DISTRICT BANKING CO., LD.*

*Channell J.* 108 L. T. 728; 29 T. L. R. 492; 57 S. J. 478

See above, Cheque.

**• Deposit of Securities.**

*Bearer bonds deposited by bill broker as security for loan — Re-delivery of bonds by banker in exchange for cheque — Whether bonds im-*

**BANKER (Deposit of Securities)—continued.**

*pressed with trust in favour of banker until cheque honoured.*

The plt. banks lent money on bearer bonds to a firm of bill brokers. They called on these loans, and, in accordance with the general practice in such cases, the bill brokers on the morning that the loans were repayable went to the plt.s., gave each of them a cheque for the amount of the call, and received in exchange the bonds that had been deposited as security. The cheques having been dishonoured, the plt.s. sued the defts., who had received in the course of the same day the bonds in question from the bill brokers, the plt.s. alleging that by a practice or usage the bonds were impressed with a trust in their favour until the cheques were honoured:—

*Held*, that the bonds being negotiable and passing by delivery were not impressed with a trust in favour of the plt.s.

*Burra v. Ricardo* (1885) Cab. & E. 478, questioned.

Decision of Hamilton J., 17 Com. Cas. 280, affirmed. *LLOYDS BANK, LD. v. SWISS BANKVEREIN. UNION OF LONDON AND SMITHS BANK, LD. v. SWISS BANKVEREIN* - C. A. 18 Com. Cas. 79; 108 L. T. 143; [1913] W. N. 52; 29 T. L. R. 219; 57 S. J. 243

*Broker, Deposit of securities by—Authority of broker to pledge—Estoppel—Purchaser for value in good faith.*

The plt. had purchased through a firm of stockbrokers 110 shares in a co. registered in the name of H. J. H. On the back of each certificate was a form of transfer which had been executed in blank by H. J. H. The certificates in this condition were left by the plt. in the hands of the stockbrokers, who deposited them with their bankers, the defts., together with a number of other securities, as security for their general banking account. At the instance of the stockbrokers the certificates for the plt.'s shares were exchanged for other certificates. With the assent of the plt. the new certificates were not made out in his name, and at the request of the stockbrokers the bankers consented to the certificates being made out, and they were made out, in the names of nominees of the bank. The stockbrokers became bankrupt. The plt. brought an action against the bankers to recover the shares or their value. The bankers claimed to retain them as pledgees.

Pickford J. held on the facts that the defts. had taken the shares from the stockbrokers in good faith and without notice of the plt.'s right, and, following *London Joint Stock Bank v. Simmons* [1892] A. C. 201, held that the plt. was estopped in this action from setting up his title as against that of the defts. *FULLER v. GLYN, MILLS, CURRIE & Co.* - Pickford J. [1913] W. N. 362; 30 T. L. R. 162

**BANKERS' BOOKS EVIDENCE ACT, 1879.**

*See EVIDENCE.*

**BANKRUPTCY.**

*Act of Bankruptcy, col. 32.*

*Appeal. See APPEAL.*

**BANKRUPTCY—continued.**

*Assignment, col. 33.*

*Company, col. 35.*

*Costs, col. 35.*

*Discharge, col. 35*

*Discovery, col. 36.*

*Documents. See above, Discovery.*

*Forfeiture. See WILL.*

*Fraudulent Preference, col. 37.*

*Husband and Wife. See DIVORCE.*

*Judgment Summons, col. 37.*

*Lunatic, col. 38.*

*Notice, col. 38.*

*Partnership, col. 40.*

*Petition, col. 40.*

*Principal and Surety. See PRINCIPAL AND SURETY.*

*Proof, col. 41.*

*Property Divisible among Creditors, col. 42.*

*Receiving Order, col. 41.*

*Reputed Ownership. See above, Property Divisible among Creditors.*

*Sale, col. 45.*

*Settlement. See above, Assignment.*

*Tithe. See TITHE RENT-CHARGE.*

*Trustee, col. 45.*

*Will. See WILL.*

**Act of Bankruptcy.**

*Circular to trade creditors—Proposals for carrying on the debtor's business—Statement at creditors' meeting—Acts of bankruptcy—Petition presented by secretary of a company—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (h); s. 148.*

A circular, issued by a trader to his creditors in which they are invited to attend a meeting to be held for the purpose of discussing the position of affairs and of deciding upon methods for continuing the business, may be a sufficient notice of suspension of payment of debts to be a good act of bankruptcy within s. 4, sub-s. 1 (h) of the Bankruptcy Act, 1883. And a proposal, laid before the creditors' meeting, by which creditors are to be paid in full by instalments, partly in cash and partly in shares, may also be a good act of bankruptcy within the meaning of the section.

*Semble*, in the case of a co. presenting a petition by an officer authorized in that behalf it is unnecessary that the resolution of the board to delegate its authority should be under seal, provided that the seal of the co. is affixed to the authority. *In re MIDGLEY*

Div. Ct. 108 L. T. 45; 57 S. J. 247

—Co-judgment debtors—Time given to one judgment debtor—Principal and surety

—Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 79), s. 5.

*See PRINCIPAL AND SURETY.*

**BANKRUPTCY (Act of Bankruptcy)—continued.**

*"Goods held by sheriff for twenty-one days"*—*Interpleader summons—Consent order for sale of goods—Title of trustee in bankruptcy to proceeds of sale—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 1—Rules of the Supreme Court, 1883, Order LVII., rr. 1, 8, 11, 12.*

The Bankruptcy Act, 1890, s. 1, enacts that a debtor commits an act of bankruptcy, if his goods are seized in any civil proceeding in the High Court and are "held by the sheriff for twenty-one days," provided that, where an interpleader summons is taken out in regard to the goods seized, the time elapsing between the date at which the summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days.

On May 20, 1911, the sheriff seized the goods of a judgment debtor under a writ of fi. fa., and on June 9 (the twentieth day after the seizure) took out an interpleader summons which was heard on June 12, when, the third party claim being admitted, an order was made by consent that the sheriff should sell and pay the amount of the claim and his costs of the execution. The sheriff on the next day sold the goods. The judgment debtor having become bankrupt, his trustee in bankruptcy claimed the proceeds of sale from the judgment creditors on the ground that the judgment debtor had committed an act of bankruptcy by reason of the sheriff having been in possession for twenty-one days:—

*Held*, that, inasmuch as the sheriff had not been ordered to withdraw and no interpleader issue had been ordered on the interpleader summons, the proviso to s. 1 of the Act of 1890 had no application, and that the enacting part of the section remained unimpaired.

*Held*, therefore, that an act of bankruptcy was committed and that the trustee in bankruptcy was entitled to the proceeds of the sale.

Decision of Phillimore J. [1912] 2 K. B. 520, reversed. *MASON (TRUSTEE OF CHETWYND, A BANKRUPT) v. BOLTON'S LIBRARY, LD.*

*C. A.* [1913] 1 K. B. 83; 82 L. J. (K. B.) 217; 20 Mans. 1; 107 L. T. 673; [1912] W. N. 269; 57 S. J. 96

**Appeal.**

See *APPEAL*—Notice, and below, *Discharge*.

**Assignment.**

*Assignment in fraud of creditors—Good consideration for part of property assigned—Apportionment of benefit of contract—13 Eliz. c. 5—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 43, sub-s. 1 (b); ss. 47, 49.*

A debtor, in receipt of a conditional life pension, assigned the same to his sister, in consideration of her taking over, in the first place, the liability for the payment of an annuity of 50*l.* to a third party; and, secondly, in consideration of her covenanting to maintain the debtor and provide him with a home.

The debtor subsequently became bankrupt,

**BANKRUPTCY (Assignment)—continued.**

and the assignment was impeached by the trustee as a fraud on the creditors:—

*Held*, that the taking over of the liability for payment of the annuity of 50*l.* was good consideration, and to that extent the deed must stand; but that after discharging the liability for the annuity, the assignee must pay over the remainder of the pension to the trustee. *STURMEY'S TRUSTEE v. STURMEY*

Phillimore J. 107 L. T. 718

*Composition—Key of business premises left with trustee—Trustee authorized by creditors not to enforce deed—Key returned to debtor—Bankruptcy of debtor—Liability of trustee of deed to account to trustee in bankruptcy.*

*In re PRIGOSHEN. Ex parte OFFICIAL RECEIVER - Phillimore J.* [1912] 2 K. B. 494; 81 L. J. (K. B.) 1199; 19 Mans. 323; 106 L. T. 814; [1912] W. N. 151; 56 S. J. 554

*Proposed deed of assignment—Assent of creditor—Revocation of assent before execution of deed—Estoppel—Joint petition.*

*In re JONES BROTHERS. Ex parte GEORGE NEWNES, LD., AND THE ASSOCIATED NEWS-PAPERS, LD. Div. Ct.* [1912] 3 K. B. 234; 19 Mans. 349; 107 L. T. 236; [1912] W. N. 220; 56 S. J. 751

*Voluntary settlement—Assignment of policy—Bankruptcy of assured—Subsequent payments by insurance company to bankrupt—Conversion of lapsed policy into paid-up policy—Notice—Title of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 47, 49.*

J. S. effected a policy of insurance on his own life with the Indian branch of the N. B. and M. I. Co. for 60,000 rupees in June, 1903. This policy he subsequently assigned to his wife in April, 1905, but such assignment was to be revoked in the event of his wife predeceasing him. Within seven months of such assignment the assured was adjudicated bankrupt, and in June, 1906, the policy lapsed. In Dec., 1906, certain sums, in respect of bonus and refund of premiums, on the lapsed policy, were paid by the insurance co. to the bankrupt. In June, 1910, at the request of the bankrupt and his wife the old policy was converted into a paid-up non-participating policy for 12,000 rupees, and against this policy the insurance co. advanced two sums of 4000 rupees and 3500 rupees to the bankrupt's wife.

Upon application by the trustee in bankruptcy to set aside the assignment to the bankrupt's wife, and to have the policy handed over to him free from incumbrances, and for the payment to him of the sum paid to the bankrupt by the insurance co., it was agreed that the question whether the insurance co. had notice of the English bankruptcy in Dec., 1906, or at any material time should stand over until after further discovery:—

*Held* that, whether or not the insurance co. had notice of the English bankruptcy, the trustee was entitled to the various sums paid by the insurance co. to the bankrupt.

*Held* also, that, if the insurance co. had notice, the trustee was entitled to have the

**BANKRUPTCY (Assignment)—continued.**

converted policy handed over to him free from incumbrances; but that, if the co. had no notice, the trustee, following the decision in *In re Hart* [1912] 3 K. B. 6, must take the policy subject to such incumbrances. *In re SHERAGER* - - - Phillimore J 108 L. T. 346

*Voluntary settlement—Bankruptcy of settlor—Sale by voluntary donee after act of bankruptcy—Purchase for valuable consideration and without notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.*

*In re HART. Ex parte GREEN*

C. A. [1912] 3 K. B. 6; 81 L. J. (K. B.) 1913; 19 Mans. 334; 107 L. T. 368; [1912] W. N. 174; 28 T. L. R. 482; 56 S. J. 615

**Company.**

— Liquidation—Liability of partners—Right of double proof.

*See COMPANY—WINDING-UP—Proof.*

— Petition presented by—Seal—Resolution.

*See above, Act of Bankruptcy.*

**Costs.**

*Official receiver—Unsuccessful application by—Order to pay costs personally—Jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20, 105—General Rules under the Bankruptcy Acts, 1883, 1890, rr. 108, 192, 231, 262, 339.*

A receiving order having been made upon a creditor's petition against a firm, it was alleged, but denied, that a certain person was a partner in the firm. The official receiver applied, under s. 20 of the Bankruptcy Act, 1883, for an order of adjudication against the alleged partner. The registrar dismissed the application and made a personal order for costs against the official receiver:—

*Held*, on appeal, that the official receiver in making the application was acting, not in discharge of any statutory duty, but merely in exercise of his powers under the Act, and that the registrar had jurisdiction to make the order, and in making it had not improperly exercised that jurisdiction.

*In re John Tweddle & Co.* [1910] 2 K. B. 697, followed. *In re ARTHUR WILLIAMS & Co.* *Ex parte THE OFFICIAL RECEIVER*

C. A. [1913] 2 K. B. 88; 82 L. J. (K. B.) 459; 20 Mans. 21; 108 L. T. 585; [1913] W. N. 24; 29 T. L. R. 243; 57 S. J. 285

**Discharge.**

*Appeal from county court—Unconditional refusal of discharge—Order varied—Suspension of discharge dates from application for discharge—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-ss. 2, 3 (a), (d), (f)—Bankruptcy Rules, r. 241.*

A bankrupt's application for discharge will only be unconditionally refused in very exceptional circumstances. Delay in applying for a discharge, in the absence of fraud, will not justify such refusal. If an order made on an application for discharge is varied on appeal, the order so varied shall be dated of the day on which the application was made, and shall take

**BANKRUPTCY (Discharge)—continued.**

effect from the day on which such order was drawn up. *In re PEARSE. Ex parte THE BANKRUPT* - - - Div. Ct. 107 L. T. 859

*Debt—Bankruptcy of debtor—Discharge—Subsequent acknowledgment of debt—Foreign document—New contract after discharge—Consideration—Proceeding “in respect of a debt”—Conflict of laws—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 30, sub-s. 3.*

*In re BONACINA. LE BRASSEUR v. BONACINA*  
• C. A. [1912] 2 Ch. 394; 81 L. J. (Ch.) 674; 10 Mans. 224; 107 L. T. 498; 28 T. L. R. 508; [1912] W. N. 189; 56 S. J. 667

**Discovery.**

*Discovery of debtor's property—Order to produce for inspection—Jurisdiction of registrar—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 27, 99, 102—Bankruptcy Rules, Nos. 6, 27, 69.*

The procedure of s. 27 of the Bankruptcy Act, 1883, is primarily intended to apply to the case of a recalcitrant witness, and is only one of the methods by which the official receiver or trustee is enabled to obtain discovery of the debtor's property.

The registrar has jurisdiction to order a person to produce for the inspection of the trustee all documents and papers relating to the estate of the debtor. *In re GEIGER* - Div. Ct. 109 L. T. 224

*Production of documents by witness—Right of Official receiver to custody of documents—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 27.*

*Appeal from Reading County Court.*

The appellant, Hatt, was required to, and did, attend before the registrar of the county court to give evidence in the bankruptcy of Ash under s. 27 of the Bankruptcy Act, 1883. In the course of the examination the registrar made an order that certain accounts which were the appellant's property and in his possession should, be handed over by him to the official receiver who was the trustee in bankruptcy.

On appeal to the county court judge the decision of the registrar was affirmed and an order was made that the appellant should hand over to the official receiver the following documents of account, namely, drafts of the accounts between the appellant and the bankrupt and prepared by the appellant for his own use, such documents to be retained by the official receiver for a period of ten days, for the purpose of making copies.

The Div. Ct. allowed the appeal.

Horridge J. said that there was no jurisdiction to make the order. It was quite true that it might be ordered that documents should remain in the custody of the Court during the examination, but the official receiver was not an officer of the Court in the sense of being the judge's deputy, as the registrar was, and the custody of the official receiver was not the custody of the Court. Appeal allowed. Leave to appeal refused. *In re ASH; Ex parte HATT*  
Div. Ct. [1913] W. N. 375; 58 S. J. 174

**BANKRUPTCY—continued.****Documents.**

See above, **Discovery.**

**Forfeiture.**

See **WILL—Forfeiture.**

**Fraudulent Preference.**

*Return of goods to creditor — Notice of debtor—Evidence—Collateral facts—Admissibility—Pressure—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48.*

Where a trustee in bankruptcy attacks a transaction between a debtor and his creditor as a fraudulent preference, evidence of other acts of preference in favour of other creditors, committed by the debtor shortly before or after the transaction impugned, is admissible to shew the debtor's intent.

A debtor, insolvent to his knowledge, wrote to his principal creditor, whose account exceeded 3000*l.*, and who held current bills for 1000*l.*, two of them just falling due for sums amounting together to 512*l.*, asking for one of the bills to be renewed. The creditor replied that the bills must be met and the account considerably reduced. The debtor telegraphed suggesting a return of goods. The next day at an interview the creditor demanded a substantial payment or a return of goods, otherwise he would "make it hot" for the debtor. The debtor agreed to return goods and during the next few days returned goods to the value of 1808*l.*, being more than three times the amount of the two bills then due. Within three months the debtor became bankrupt:—

*Held*, on the evidence, that the return of the goods was not caused by any real pressure on the part of the creditor but was the voluntary act of the debtor, and therefore the transaction was a fraudulent preference. *In re RAMSAY; Ex parte DEACON* - *Phillimore J.* [1913] 2 K. B. 80; 82 L. J. (K. B.) 526; 20 Mans. 15; 108 L. T. 495; [1913] W. N. 45; 29 T. L. R. 225

**Husband and Wife.**

Deed of separation—Covenant not to sue for restitution of conjugal rights—Bankruptcy of husband—Arrears of allowance under deed proved for by wife—Discharge—Effect.

See **DIVORCE—Separation Deed.**

**Judgment Summons.**

*Costs in Divorce Court—Summons by petitioner's solicitor—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5.*

The debtor had been the co-respondent in a divorce suit of *Helmore v. Helmore and Cox-Sinclair*, in which the petitioner obtained a decree for divorce with costs to be paid by the co-respondent. The costs were taxed, and by an order of the Divorce Court, made on Feb. 7, 1908, the debtor was ordered to pay the amount of the taxed costs to Mr. Wilding Jones, the solicitor for the petitioner. The

**BANKRUPTCY (Judgment Summons)—contd.**

order was in common form and in accordance with the usual practice. Default was made in payment of the costs, and on July 8, 1911, Mr. Wilding Jones took out a judgment summons in his own name against the debtor for the amount of the costs. The summons had been adjourned from time to time and now came on for hearing.

Phillimore J. dismissed the summons, but gave leave to issue a fresh summons. *In re COX-SINCLAIR; Ex parte JONES* - [1913] W. N. 263

**Lunatic.**

*Debtor a person of unsound mind not so found by inquisition—Wife appointed receiver of dividends and income of debtor's property—Recovery of debtor, but receivership continued—Act of bankruptcy by debtor—Property not comprised in receivership—Petition and receiving order—Lunacy Act, 1890 (53 Vict. c. 5), s. 116. sub-s. 1 (c)—Bankruptcy Rule 271A.*

A person of unsound mind, not being a lunatic so found by inquisition, on obtaining his discharge from an asylum, is deemed to have recovered his sanity, notwithstanding that an order appointing his wife receiver of the dividends, interest, and income of his property is still in force, and such a person can commit an act of bankruptcy.

The Court of Bankruptcy will not refuse to make a receiving order, where there is a possibility of the existence of assets available for division among the creditors, and an order vesting the dividends and income, but not the corpus, of the debtor's property in his wife is not sufficient ground for such refusal. *In re BELTON. In re A DEBTOR* (No. 21 of 1912). *THE DEBTOR v. THE PETITIONING CREDITOR* - Div. Ct. 108 L. T. 344; [1913] W. N. 63; 29 T. L. R. 313; 57 S. J. 343

**Notice.**

*Final judgment—Action for specific performance—"Judgment or order"—"Wherein execution has not been stayed"—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

*In re A DEBTOR* (No. 837 of 1912) - C. A. [1912] 3 K. B. 242; 81 L. J. (K. B.) 1225; 19 Mans. 317; 107 L. T. 506; [1912] W. N. 188; 56 S. J. 651

*Judgment creditor—Balance of debt unpaid—Fresh agreement—Dismissal of petition—Appeal—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).*

The A. E. C. Co. obtained a judgment against A. L. V. for 440*l.* and 8*l.* costs on Nov. 25, 1910, and on May 25, 1911, the debtor paid 200*l.* under the judgment. The balance remaining unpaid, the A. E. C. Co. instituted bankruptcy proceedings, and thereupon the debtor's solicitor wrote to the A. E. C. Co. on Dec. 9, 1911, enclosing a cheque for 136*l.*: "It is understood that this payment includes your agreed costs of 20 guineas, and that the balance of debt, amounting to 149*l.* 5*s.* 6*d.*, is to be paid with interest at 10 per cent. on the 1<sup>st</sup> April next. It is further understood that the petition against Mr. V. shall be dismissed." The balance of debt was not paid



**BANKRUPTCY (Notice)—continued.**

on April 1, and further time was given by the A. E. C. Co.

On May 18, 1912, a further sum of 46L. 17s. was paid on account of the balance of debt and interest, and in consideration thereof the time for payment was further extended to Aug. 6. The balance remained unpaid, and on Jan. 1, 1913, the A. E. C. Co. issued a fresh bankruptcy notice for 105L. 9s. 8d., being the amount of the balance of debt together with interest at 4 per cent.

The petition was heard on Mar. 18, 1913, and was dismissed by the registrar on the ground that the agreement of Dec. 9, 1911, and the payment of May 18, 1912, constituted a fresh agreement, and that a bankruptcy notice could not be issued in respect of the unpaid balance of the old judgment debt. The petitioning creditors appealed:—

*Held*, that the creditors by the agreement of Dec. 9, 1911, had not waived their judgment, but had merely postponed their recourse to it, and that, on the debtor's default in payment of the balance due on April 1, 1912, the creditors' rights revived, and they were entitled to issue a bankruptcy notice for the balance of the judgment debt, and that therefore the appeal succeeded, and a receiving order ought to be made against the debtor. *In re* VOGEL; *Ex parte* ANGLO-EASTERN CONTRACT CO.

Div. Ct. 109 L. T. 325

*Judgment creditor—Garnishee order absolute—Bankruptcy notice—"Execution stayed"—Secured creditor—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g).

By s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883, a debtor commits an act of bankruptcy, if a creditor has obtained a final judgment against him for any amount and, execution thereon not having been stayed, has served on him a bankruptcy notice under the Act, which notice is not complied with as directed by the sub-section.

A judgment creditor obtained a garnishee order absolute whereby it was ordered that the garnishees should pay to the judgment creditor the amount of the judgment debt out of a debt due from them to the judgment debtor. Nothing was in fact paid under this order:—

*Held*, that execution on the judgment was not thereby stayed within the meaning of the section, but that a bankruptcy notice might properly issue notwithstanding the garnishee order.

*Held*, also, that the bankruptcy notice might properly issue for the full amount of the judgment debt and that the judgment creditor was not bound to give credit for the value of the security, if any, afforded by the garnishee order. *In re* RENISON; *Ex parte* GREAVES.

Div. Ct. [1913] 2 K. B. 300; 82 L. J. (K. B.) 710; 20 Mans. 115; 108 L. T. 811; [1913] W. N. 98; 57 S. J. 445

*Judgment in county court—No order for payment by instalments—Payment into Court of part of debt—Bankruptcy notice for full amount—Execution—Practice—Bankruptcy Act, 1883*

**BANKRUPTCY (Notice)—continued.**

(46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g)—*County Court Rules, 1903 and 1904, Order XXIII, r. 13; Order XXV, rr. 8, 23A, 23B; Appendix H, Form 163.*

*In re* MILLER. *Ex parte* FURNITURE AND FINE ARTS DEPOSITORIES

C. A. [1912] 3 K. B. 1; 81 L. J. (K. B.) 1180; 19 Mans. 354; 107 L. T. 417; [1912] W. N. 188; 56 S. J. 634

*Non-compliance with bankruptcy notice—Notice of act of bankruptcy committed by judgment creditor—Subsequent adjudication of judgment creditor—Relation back of trustee's title—Invalidity of notice—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 43.

*In re* A DEBTOR (No. 211 of 1912). *Ex parte* THE DEBTOR. C. A. [1912] 2 K. B. 533; 81 L. J. (K. B.) 1169; 19 Mans. 309; 107 L. T. 3; [1912] W. N. 166; 56 S. J. 689

**Partnership.**

*Executors—Carrying on testator's business in his firm name—Receiving order against firm—Application to adjudicate—Whether executors are partners—Partnership Act, 1890* (53 & 54 Vict. c. 39), s. 1—*Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), ss. 20, 115—*Bankruptcy Rules, 1886, rr. 259, 264.*

*In re* FISHER & SONS. Phillimore J. [1912] 2 K. B. 491; 81 L. J. (K. B.) 1246; 19 Mans. 332; 106 L. T. 814; [1912] W. N. 150; 56 S. J. 553

— Joint and several liability—Proof against one partner's separate estate—Claim to set off debt due to joint estate.

*See* COMPANY—WINDING-UP—Proof.

**Petition.**

— Company—Petition by.

*See* above, Act of Bankruptcy.

*Judgment debt founded on an award—When Court of Bankruptcy will go behind a judgment—Award not a judgment—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 7, sub-ss. 2, 3.

Where a petition is based on a judgment debt founded on an award, and there is no allegation of fraud or improper conduct made against the arbitrator, the Court of Bankruptcy will not go behind the judgment and reopen the award for the purpose of retrying what has already been adjudicated upon by the arbitrator. *In re* NEWBY; *Ex parte* WHITEMAN

Div. Ct. 107 L. T. 832; 57 S. J. 174

*Person trading under partnership name—Service of petition on person "having at the time of service control, or management of the business there" insufficient—Personal service necessary—Bankruptcy Act, 1883* (46 & 47 Vict. c. 52), s. 115—*Bankruptcy Rules, r. 260—Order XLVIII, rr. 3, 11.*

Two creditors filed a bankruptcy petition against H. Gough, trading under the style of J. and M. Patrick; and on May 9, 1912, they served this petition upon F. M. G. at the debtor's place of business. At the hearing of the petition it was dismissed on the ground that the service was insufficient:—

**BANKRUPTCY (Petition)—continued.**

*Held*, that, whether or not the service of the petition upon F. M. G. was sufficient within the meaning of r. 260, the debtor was not a firm or partnership, and therefore the rule was inapplicable and the petition to be valid must have been served upon the debtor in person. *In re THE DEBTORS* (No. 21 of 1912); *Ex parte THE PETITIONING CREDITORS*. Div. Ct. 107

L. T. 624; [1912] W. N. 238; 57 S. J. 9 (sub nom. *In re PATRICK*. *Ex parte HALL*).

**Principal and Surety.**

- Co-defendants — Judgment — Time given to one judgment debtor — Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5.

*See PRINCIPAL AND SURETY.*

**Proof.**

*Debt contracted after commission of act of bankruptcy—Rejection by trustee—Onus of proof of notice of act of bankruptcy—Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), s. 165—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 37, sub-s. 2; 49.*

Where a trustee rejects a creditor's proof of debt on the ground that the creditor, at the time of the creation of the debt, had notice of the commission of an act of bankruptcy, it is for the trustee to shew that the creditor had notice of the act of bankruptcy, and not for the creditor to shew that he had no notice thereof.

The Bankruptcy Act, 1883, has shifted the onus of proof from the creditor to the trustee, and the case of *In re Tollemache, Ex parte Revell*, 1 L. T. Rep. 379; 13 Q. B. D. 727, a decision under the Bankruptcy Act, 1849, is no longer an authority on the point. *In re PEEL. Ex parte CONOUR*. Phillimore J. [1913] 109 L. T. 223; W. N. 262; 57 S. J. 730

*Loan to trading firm—Share of profits of a trading venture—What is a "business" within the meaning of the Partnership Act—Failure of proposed company—Subsequent alteration of terms—Partnership Act, 1890 (53 & 54 Vict. c. 9), ss. 2, 3—13 Eliz. c. 5.*

S. A. in Dec., 1910, lent the firm of R. A. & Co. sums amounting to 13,325*l.* for the purposes of a commercial adventure in Mexico, upon the terms that the loan was repayable with interest at 5 per cent. or, at the option of the lender, together with a share in the profits of the venture. S. A. decided in lieu of interest to receive shares in the proposed co. The co. was never formed, and in April, 1911, the terms of the agreement were varied, S. A. continuing to lend the money in consideration of 5 per cent. interest and a proportion of any profits realized out of the Mexican venture. No profits were ever realized therefrom, and in Aug., 1911, the firm of R. A. & Co. became financially embarrassed. Thereupon S. A. undertook to release the firm from their liability in consideration of the individual members of the firm accepting bills for the amount of the loan, and an ultimate guarantee being given by the firm for their due payment.

**BANKRUPTCY (Proof)—continued.**

In the ensuing bankruptcy S. A. claimed to prove for the full amount of his debt against the joint estate of the firm:—

*Held*, that the release of the firm's liability in Aug., 1911, and the substitution thereof of the liability of the several partners, constituted a new agreement, and that S. A. under the agreement of Aug., 1911, could prove for his debt against the joint estate of the bankrupt firm in competition with the other creditors.

*Semble*, the transaction, although originally within the mischief of ss. 2 and 3 of the Partnership Act, ceased to be so when in April 1911, the source of any intended profits failed and the advance became a mere loan at interest. The term "business" in the Partnership Act, 1890, s. 2, sub-s. 3 (d), applies not merely to a lifelong or universal business, but to any separate commercial venture in which a trader or firm of traders embarks. *In re ABENHEIM. Ex parte ABENHEIM*. Phillimore J. 109 L. T. 219

**Property Divisible among Creditors.**

*Auctioneer and vendor—Course of business—Fiduciary relationship—Proceeds of sale earmarked—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44.*

The deceased was an auctioneer holding cattle sales in B. It was alleged that his course of business was to sell stock in his own name, giving varying credit to the buyers, but paying the vendors at the conclusion of the sale, if they so wished, or otherwise, within two days, irrespective of the time of payment of the purchase price by the buyers.

His conditions of sale provided that he sold as commission agent and would in no way be liable as principal, and that the remedy of the vendor should be against the purchaser only.

On April 23, 1912, the deceased held a sale at B. at which, among other lots, he disposed of cattle belonging to C. On April 21 the deceased left his office, and on April 25 committed suicide. Earlier on the same day his son had paid into a special account at the bank the proceeds of this sale, amounting to 794*l.*, including a cheque from the purchaser of C.'s cattle for the amount due. On May 2 an order was made for the administration of the deceased's estate in bankruptcy, and G. was appointed trustee. The vendor, C., applied for an order that the trustee should pay over to him the purchase price of the cattle, less the auctioneer's commission:—

*Held*, that there was no evidence of an agreement by which the vendor became the creditor of the auctioneer and looked to him alone and not to the purchaser for payment; that the auctioneer received the money in a fiduciary capacity, and, as it could be traced, it must be paid over to the vendor.

Decision of Div. Ct. (57 S. J. 174) reversed. *In re COTTON. Ex parte COOKE*. C. A. 108 L. T. 310; 57 S. J. 343

*Dismissal of petition—Receiving order made on appeal—Relation back of order—Transactions*

**BANKRUPTCY (Property Divisible among Creditors)—continued.**

*with bankrupt in interval, Protection of—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 49.*

*In re TRALE. Ex parte BLACKBURN*

Div. Ct. [1912] 2 K. B. 387; 81 L. J. (K. B.)

1243; 19 Mans. 327; 106 L. T. 893;

[1912] W. N. 140; 56 S. J. 553

*Judgment creditor—Execution levied on goods of judgment debtor—Execution paid out direct to judgment creditor—Withdrawal of sheriff—Bankruptcy of debtor—“Completion of execution”—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 11.*

On May, 21, 1913, the sheriff seized the goods of the debtor under a writ of fi. fa. issued by judgment creditors of the debtor for 31l. 17s. 10d., being the amount of their judgment debts and costs. On May. 23 the judgment creditors instructed the sheriff not to remove the goods of the debtor, as they were informed that the execution would probably be paid out in a day or two.

On May 28 Messrs. Withers & Co., the solicitors of the debtor, out of moneys handed to them by him, paid the judgment creditors the 31l. 17s. 10d., and also paid the sheriff 5l. 17s. 0d. the amount of his costs and possession fees, and the sheriff, by the direction of the judgment creditors, withdrew from possession. On June 5 a receiving order was made against the debtor on his own petition presented the same day. The trustee in bankruptcy claimed repayment of the 31l. 17s. 10d. from the judgment creditors on the ground that they could not, by accepting payment under the execution direct from the judgment debtor, evade the provisions of s. 11 of the Bankruptcy Act, 1890.

Horridge J. held that a judgment creditor was not entitled to retain the benefit of the execution against the goods of his debtor, unless he had “completed the execution,” either by a seizure and sale as defined by s. 45 of the Bankruptcy Act, 1883, or by the full amount of the levy being paid to the sheriff as provided by s. 11 of the Bankruptcy Act, 1890, and the sheriff had retained the same for fourteen days without notice of an act of bankruptcy. If by analogy the statutory fourteen days was applicable to the case where the judgment debtor pays the amount of the levy direct to the execution creditor and also pays the sheriff's costs, the analogy did not apply in the present case, because the bankruptcy of the debtor supervened within nine days of May 28, the date of the payment to the judgment creditors. The trustee was therefore entitled to an order for payment of the 31l. 17s. 10d. *In re GODDING. Ex parte THE TRUSTEE* - - Horridge J. [1913] W. N. 374

— Policy of assurance—Payment by assurance company.

See above, Assignment. \*

*Reputed ownership—Bill of sale—Bankruptcy of grantor before default in payment—Bills of Sale (Ireland) Act (1879) Amendment Act, 1883 (46 Vict. c. 7), s. 7—Irish Bankrupt and Insolvent Act, 1857 (20 & 21 Vict. c. 60), s. 313.*

Where the grantor of a registered bill of sale

**BANKRUPTCY (Property Divisible among Creditors)—continued.**

framed in conformity with the Bills of Sale Acts is adjudicated a bankrupt before making any default in payment of the sums thereby secured, the goods comprised in the bill of sale are, in the absence of evidence displacing the reputation of ownership, in the possession, order, and disposition of the bankrupt as reputed owner thereof with the consent and permission of the true owner within the meaning of s. 313 of the Irish Bankrupt and Insolvent Act, 1857.

*In re Ginger* [1897] 2 Q. B. 461, and *In re Hayes* [1899] 2 I. R. 206, followed and approved. *In re Stanley* (1886) 17 L. R. Ir. 487, overruled.

Order of the C. A. in Ireland [1912] 2 I. R. 170, reversed. *HOLLINSHEAD v. P. AND H. EGAN, LD.* - - H. L. (I.) [1913] A. C. 564; [1913] 1 I. R. 487; [1913] W. N. 218; 29 T. L. R. 640; 57 S. J. 661

*Reputed ownership—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. (iii.).*

Goods which would not pass to the trustee as being in the order or disposition of the bankrupt, if they were upon the bankrupt's premises, will not pass to the trustee, if they are lying in the warehouse of a third party in the name of the bankrupt. *Re KELLER. Ex parte ROSE*

Horridge J. 58 S. J. 155

*Seizure by sheriff under writ of fi. fa.—Ransom of goods by third party—Money advanced for specific purpose—Title of trustee in bankruptcy—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44, sub-s. (iii.).*

Under a writ of fi. fa. the sheriff seized scenery and theatrical costumes lying at a railway station in the name of a judgment debtor, but not being in fact his property. The debtor had a few days previously been adjudicated bankrupt, although the sheriff had no notice of the fact at the time. To release this property for a performance which the bankrupt was under a contract to present, a sum of money was paid over to the sheriff by a third party, who took a receipt from the bankrupt and deducted the amount so paid from a share of the takings at the theatre to which the bankrupt became entitled under the contract at the end of the week :—

*Held* (Farwell L.J. dissenting), that the money was paid for the specific purpose of releasing goods which were not the property of the bankrupt, and the official receiver was not entitled to the goods seized or the money.

Decision of the Div. Ct., 107 L. T. 96, affirmed. *In re WATSON. Ex parte SCHIPPER* C. A. 107 L. T. 783

**Receiving Order.**

*Incumbent—Successive petitions—Payments by debtor's relatives—Extortion—Possible appointment of sequestrator of benefice—Futility of bankruptcy proceedings.*

A creditor, who was a mortgagee, presented a bankruptcy petition against the incumbent of a benefice, and having withdrawn it on a payment by the debtor's relatives, presented another petition for the balance, and it was also with-

**BANKRUPTCY (Receiving Order)—continued.**

drawn on their making another payment. The creditor then presented another petition for the remaining balance and the debtor gave evidence that he believed there would be a surplus. A receiving order was made against the debtor:—

*Held*, (1.) that the circumstances did not show that there was any extortion, and (2.) that the possibility of the Bishop appointing a sequestrator of the benefice did not prove that the bankruptcy proceedings would be futile; and that therefore the receiving order must be affirmed. *In re HAY* - - - Div. Ct. 30 T. L. R. 131.

"Sufficient cause" for refusal of receiving order—Existence of valid deed of assignment—No assets—*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 7, sub-s. 3.

Even in a case where the debtor has assigned all his assets to a trustee for the benefit of creditors by a deed which has become unimpeachable by lapse of time, the Court will not refuse to make a receiving order, unless clearly convinced, not only that there are, but also that there will be, no assets in the bankruptcy. *In re SCOTT*. *Ex parte PARIS-ORLEANS Ry. Co.*

C. A. 58 S. J. 11

**Reputed Ownership.**

See above **Property Divisible among Creditors.**

**Sale.**

*Sale of bankrupt's business to a private company—Company promoted by the trustee and committee of inspection—Sanction of the Court—Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 56—*Bankruptcy Rules*, 1886, r. 316.

The trustee in bankruptcy may, with the leave of the Court, sell the bankrupt's business to a private co., notwithstanding that such co. has been promoted by the trustee and the committee of inspection, and that such persons are interested in such co. as shareholders or directors or officers of the co. *In re SPINK*. *Ex parte SLATER*

Phillimore J. 108 L. T. 572; [1913] W. N. 106; 29 T. L. R. 420; 57 S. J. 445

**Settlement.**

See above, **Assignment.**

**Tithe.**

— Bankruptcy of incumbent—Sequestration of benefice—Tithes paid under mistake of fact to sequestrator appointed by bishop.

See **TITHE RENT-CHARGE.**

**Trustee.**

See above, **Act of Bankruptcy, Assignment, and Property Divisible among Creditors.**

*Trustee carrying on the bankrupt's business—Goods supplied to the business by firms in which a member of the committee of inspection was a partner—Payments out of the estate—Sanction of the Court—Bankruptcy rule 317.*

Where the trustee in bankruptcy is carrying on the business of the bankrupt and orders

**BANKRUPTCY (Trustee)—continued.**

goods from firms with which a member of the committee of inspection is connected, although this fact was not known to the trustee at the time when such orders were given and executed, the Court will sanction the payment by the trustee out of the bankrupt's estate of the cost price of goods so supplied. *In re SPINK* (2). *Ex parte SLATER*

Phillimore J. 108 L. T. 811

See above, **Sale.**

**Will.**

— Forfeiture — Determinable life interest — Receiving order — Discharge of order. See **WILL—Forfeiture.**

**BARRISTER—Revising barrister.**

See **PARLIAMENT—Register, Correction of.**

**BASTARDY—Application for summons by single woman—Marriage—Alteration of date of summons—Non-service of summons—Subsequent marriage of mother—Application by married woman for amendment of date of hearing in summons—Power of justices to make affiliation order—Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), ss. 3, 4.**

HEALEY v. WRIGHT - - - Div. Ct. [1912]

3 K. B. 249; 81 L. J. (K. B.) 961; 23 Cox,

C. C. 173; 107 L. T. 413; 76 J. P. 367;

28 T. L. R. 435

*Evidence—Corroboration—Conviction for having had unlawful carnal knowledge—Proof of conviction—Bastardy Laws Amendment Act*, 1872 (35 & 36 Vict. c. 65), s. 4.

The respondent took proceedings against the appellant, under the Bastardy Laws Amendment Act, 1872, alleging that he was the father of her bastard child. At the hearing she gave evidence that the appellant was the father of her bastard child. The only evidence adduced to corroborate her evidence, as required by the statute, was that of a police superintendent, who proved that he was present at the conviction of the appellant at the Northampton Assizes in Oct., 1912, upon an indictment charging him with having, in Mar., 1912, and on other occasions, had unlawful carnal knowledge of the respondent, who was above the age of thirteen and under the age of sixteen years, when the appellant was sentenced to imprisonment.

The appellant contended that the evidence of the superintendent was inadmissible in point of law, that it was not proof of the fact of conviction, and that, if admissible, it did not amount to corroboration of the respondent's evidence in a material particular as required by the statute. The justices admitted the evidence:—

*Held*, on appeal by way of case stated, that the evidence of the conviction was admissible, that the fact of the conviction was sufficiently proved, and that this evidence was sufficient corroboration of the complainant's evidence in a material particular. *MASH v. DARLEY*

Div. Ct. [1913] W. N. 287; [1914] 1 K. B. 1;

30 T. L. R. 5; 58 S. J. 49

**BEARER BONDS**—Deposit by bill broker with banker as security for loan—Re-delivery by banker in exchange for cheque.  
*See* **BANKER**—**Deposit of Securities**.

**BEDDING**—Rag flock—Standard of cleanliness—Making an article of bedding—Restuffing or re-making a mattress.  
*See* **PUBLIC HEALTH**.

**BETTING**.  
*See* **CRIMINAL LAW**—**Betting** and **JUSTICES**—**Criminal Law**—**Mistrial**.

**BICYCLE**—Workmen's compensation.  
*See* **WORKMEN'S COMPENSATION**—**Accident**—*Risk not incidental to employment*.

**BIGAMY**—Nullity—Void marriage—Decree nisi—Delay in applying for decree absolute.  
*See* **DIVORCE**—**Discretion**.

**BILL OF COSTS**—Solicitors' costs.  
*See* **SOLICITOR**—**Costs**.

## **BILL OF EXCHANGE.**

*Cheque*, col. 47.

*Duress*, col. 48.

*Gaming and Wagering*, col. 48.

*Indorsement*, col. 48.

*Infant*, col. 49.

*Post-dated Cheque*. *See* above, **Gaming and Wagering**.

*Signature per pro*. *See* **BANKER**.

*Solicitor*. *See* **SOLICITOR**—**Costs**.

*Stamp*. *See* above, **Gaming and Wagering**.

### **Cheque.**

— Crossed cheque — Payment — Exchange of cheques — Ostensible authority — Estoppel.  
*See* **BANKER**—**Cheque**.

— Crossed generally, paid by bank otherwise than to a banker—Knowledge of payees of method employed by their collector—Misappropriation by collector—Liability of bank—Estoppel.  
*See* **BANKER**—**Cheque**.

*"To be retained" written on cheque*—*Promise to send another in substitution*—*Failure to keep promise*—*Dishonour*—*Action on cheque*.

The deft. gave a cheque to the plts. on a blank form of cheque and wrote on the face of it the words "To be retained," promising to send a cheque on one of his bankers' printed forms in substitution for it. This he failed to do, and the cheque was dishonoured:—

*Held*, in an action on the cheque, that as the deft. had not fulfilled his promise, the plts. were at liberty to use the cheque as an ordinary cheque and were therefore entitled to recover.  
**ROBERT v. MARSH** - **Avory J. 30 T. L. R. 14**

## **BILL OF EXCHANGE**—*continued*.

### **Duress.**

*Cheque*—*Cheque obtained by duress in France*—*Liability of drawer*.

The plts., hotel-keepers in France, obtained from the deft., a young Englishman of twenty-two years of age, who had been staying at the plts.' hotel, an English cheque payable in England, by a threat of criminal proceedings in France, if it was not given, and a suggestion that no such proceedings would be taken, if the cheque were given:—

*Held*, that payment of the cheque could not in these circumstances be enforced in an English Court.

*Kaufman v. Gerson* [1904] 1 K. B. 591, applied. - **SOCIÉTÉ DES HÔTELS RÉUNIS (SOCIÉTÉ ANONYME) v. HAWKER**  
**Scrutton J. 29 T. L. R. 578**

### **Gaming and Wagering.**

*Post-dated cheque*—*Issue of cheque affected with illegality*—*Value given in good faith*—*Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 34, sub-s. 2*.

To an action by the plt. to recover the amount of two cheques drawn to self or order and indorsed by the deft., the deft. pleaded (1.) that the cheques were originally given for gaming and wagering transactions, and so the burden of shewing that he was a holder in due course was on the plt.; and (2.) that as the cheques were post-dated, they were not payable on demand and ought to have been stamped as bills of exchange. The plt. cashed the two cheques for one H., who, the plt. knew, had been bankrupt about twelve months previously, and for whom he had cashed several other cheques within the previous few months, which cheques had all been met. It was admitted that the issue of the cheques in question was affected with illegality:—

*Held*, that the plt. was entitled to recover, inasmuch as on the evidence he had discharged the onus of proving that subsequent to the illegality he had given value in good faith for the cheques; and inasmuch as the two post-dated cheques became cheques payable on demand when the due date arrived and were therefore sufficiently stamped as cheques.  
**ROBINSON v. BENKEL**

**Horridge J. 29 T. L. R. 475**

### **Indorsement.**

*Irregular bill*—*Indorsement by way of security*—*Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 20, 55, 56*.

It had been arranged between the plts. and a co. that the plts. would supply goods to the co., to be paid for by bills of exchange accepted by the co., if the defts., who were directors of the co., would indorse the bills by way of security for their payment. In a series of transactions thereafter entered into the course pursued in each case was as follows. The plts., for the price of goods supplied, drew a bill of exchange payable to their own order on the co., and, without indorsing it, sent it to

**BILL OF EXCHANGE (Indorsement)—continued.**

the co., who returned it accepted by the co., with the debts' signatures indorsed thereon. The plts. then placed their signature on the back thereof below the signatures of the debts. These bills were duly met. In the case of a subsequent bill the same course was pursued with regard to the drawing and acceptance of, and the indorsements on, the bill. This bill was not paid at maturity. In an action by the plts. against the debts, on this last-mentioned bill, or, alternatively, as having guaranteed payment of it:—

*Held*, that the debts, were not liable as indorsers of the bill or as having incurred the liabilities of indorsers of the bill under s. 56 of the Bills of Exchange Act, 1882, and that they were not liable as on a contract of guarantee, since the provisions of s. 4 of the Statute of Frauds were not satisfied.

*Jenkins & Sons v. Coomber* [1898] 2 Q. B. 168, approved of.

*Glenie v. Smith* [1908] 1 K. B. 263, distinguished. *M. T. SHAW & Co. v. HOLLAND C. A.* [1913] 2 K. B. 15; 82 L. J. (K. B.) 592; 18 Com. Cas. 153; 106 L. T. 543; [1913] W. N. 70; 29 T. L. R. 341

**Infant.**

*Cheque—Post-dating—Holder for value—Action on cheque.*

The debt., who was an infant at the time, drew a cheque on a date prior to July 29, 1913, making it payable to one Bell, and post-dating it Aug. 14. The cheque was not given for necessities. On July 29 the debt. came of age. On Aug. 11 the plt. cashed the cheque for Bell, and on Aug. 14 presented it, but it was returned marked "account closed":—

*Held*, in an action on the cheque, that the plt. could not recover. *HUTLEY v. PEACOCK* Scrutton J. 30 T. L. R. 42

**Post-dated Cheque.**

*See above, Gaming and Wagering, and Infant.*

**Signature per pro.**

*See BANKER—Cheque.*

**Solicitor.**

— Agreement as to costs—Bill of exchange taken as payment.

*See SOLICITOR—Costs.*

**Stamp.**

*See above, Gaming and Wagering.*

**BILL OF LADING—Shipping.**

*See SHIPPING.*

**BILL OF SALE—Bankruptcy—Order and disposition—Reputed ownership.**

*See BANKRUPTCY—Property divisible among Creditors.*

*Consideration under thirty pounds—Part of consideration retained by grantee for legal expenses of bill—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), s. 12.*

The debt. granted a bill of sale of his furniture

**BILL OF SALE—continued.**

to the claimants as security for a loan, the consideration being expressed to be "the sum of thirty pounds (less, however, the sum of 2*l.* 2*s.* retained thereout by the said mortgagees with the consent of the said mortgagor, and paid to the said mortgagees' solicitor towards the costs of and incidental to the preparation, execution, stamping and registering of these presents), now paid to the said mortgagor by the said mortgagees." The plts. having recovered a judgment against the debt. and seized his furniture in execution, the claimants claimed it under their bill of sale.

On the hearing of an interpleader issue in the county court it was contended for the execution creditors that the bill of sale was void under s. 12 of the Bills of Sale Act, 1882, as having been given in consideration of a sum under thirty pounds. The county court judge overruled the contention, and gave judgment for the claimants.

The execution creditors appealed.

The Court (Bray and Lush JJ.) held that the bill was not given in consideration of a sum under thirty pounds and dismissed the appeal. *LONDON AND PROVINCES DISCOUNT CO. v. JONES. STANDARD DEVELOPMENTS, LD. (CLAIMANTS) - Div. Ct. [1913] W. N. 310: [1914] 1 K. B. 147; 30 T. L. R. 60; 58 S. J. 83*

— *Infant—Contract—Goods sold and delivered—Necessaries—Fraudulent misrepresentation as to age—Equitable relief.*  
*See INFANT—Contract.*

**BILL-BROKER**—Bearer bonds deposited by bill-broker with banker as security for loan—Re-delivery by banker in exchange for cheque.

*See BANKER—Deposit of Securities.*

**BIRMINGHAM (WORCESTER AND) CANAL ACT, 1791.**

*See BRIDGE.*

**BIRTHS, MARRIAGES, AND DEATHS**—Non-parochial registers—Certificates of recording clerk—Admissibility.  
*See EVIDENCE—Public Document.*

**BISHOP**—Tithes—Principal and agent—Bankruptcy of incumbent—Payment by bishop to trustee in bankruptcy—Money paid under mistake of fact.  
*See TITHE RENT-CHARGE.*

**BOARD OF TRADE**—Trade mark—Registration.  
*See TRADE MARK—Registration.*

**BONDS**—Deposit with banker as security for loan—Re-delivery by banker in exchange for cheques.  
*See BANKER—Deposit of Securities.*

**BONUS DIVIDEND**—Tenant for life and remainderman—Capital or income—Shares in company—Reserve fund.  
*See WILL—Capital and Income.*

**BOROUGH**—Creation of county borough—Adjustment of financial relations between county and county borough.  
*See LOCAL GOVERNMENT—County Borough.*

**BORROWING**—Building society—Banking business—Overdraft.

See BUILDING SOCIETY.

— Company—Money borrowed by managing director of a company on its behalf—Absence of authority to borrow—Equitable right of lender to recover.  
See PRINCIPAL AND AGENT.

**BREACH OF CONTRACT.**

See CONTRACT.

**BREACH OF COVENANT.**

See COVENANT.

**BREACH OF DUTY**—Agent and client—Negligence—Solicitor and bank agent.  
See SCOTTISH LAW.

**BREACH OF TRUST.**

See TRUSTEE.

**BREAD**—Sale—Carrying out bread for sale—“Cart or other carriage”—Bicycle with basket attached—Absence of scales and weights—*Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 7.*

POLLARD v. TURNER Div. Ct. [1912] 3 K. B. 625; 82 L. J. (K. B.) 30; 11 L. G. R. 42; 23 Cox, C. C. 233; 107 L. T. 792; [1912] W. N. 257; 77 J. P. 53; 29 T. L. R. 34

**BREAKING AND ENTERING**—Knowledge of owner of premises.

See CRIMINAL LAW—Breaking and Entering.

**BRIDGE**—Heavy motor car—Prohibition—Heavy Motor Car (Amendment) Order, 1907, art. 14—Validity—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), ss. 1, 6—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 12.

Art. 14 of the Heavy Motor Car (Amendment) Order, 1907, which contains regulations as to the use of a heavy motor car on a bridge forming part of a highway, and which purports to have been made by the Local Government Board under the powers conferred by s. 6 of the Locomotives on Highways Act, 1896, and s. 12 of the Motor Car Act, 1903, is not ultra vires the Local Government Board or invalid. LLOYD v. ROSS

Div. Ct. [1913] 2 K. B. 332; 82 L. J. (K. B.) 578; 11 L. G. R. 503; 23 Cox, C. C. 460; 109 L. T. 71; [1913] W. N. 108; 77 J. P. 341

*Locomotives*—Notice that bridge is insufficient to carry weights beyond ordinary traffic of district—Locomotive Act, 1861 (24 & 25 Vict. c. 70), s. 6—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 7—Canal made across highway—Highway carried by bridge over canal—Statutory duty to keep bridge “in sufficient repair”—Standard of repair—Worcester and Birmingham Canal Act, 1791 (31 Geo. 3, c. lix.), s. 61.

Sect. 6 of the Locomotive Act, 1861, provides that it shall not be lawful for the owner of any locomotive to drive it over any bridge on which a conspicuous notice has been placed by the authority of the persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary

**BRIDGE**—continued.

traffic of the district, without previously obtaining the consent of the persons liable to the repair of such bridge:—

*Held*, that, if the persons liable to repair a bridge have placed thereon a notice under s. 6 of the Locomotive Act, 1861, the fact that the weight of a particular locomotive does not exceed the weight of the ordinary traffic of the district does not entitle the owner of the locomotive to cause it to pass over the bridge without having previously obtained the consent of the persons liable to repair the bridge.

By a local Act passed in 1791, a canal co. were empowered to make a canal, and it was provided that the co. should not make the canal across any highway, until they should at their own proper charges have made such bridges over the canal, and of such dimensions and in such manner as the commrs. appointed under the Act should adjudge proper; “and all such . . . bridges . . . shall from time to time be supported, maintained, and kept in sufficient repair” by the co.

The canal was made in 1812, and was made across several highways within a certain district; and the co. constructed bridges over the canal to carry each of such highways.

In an action against the co. for a declaration that they were liable under the above provision of the Act of 1791 to keep the bridges in repair so as to be sufficient to bear the traffic which might reasonably be expected to pass along the highways carried over the canal by the said bridges, having regard to the present character and needs of the district served by the said highways:—

*Held*, that the co. were only liable to keep the bridges in repair so as to be sufficient having regard to their original construction to bear such traffic as was then ordinary on such highways. SHARPNESS NEW DOCKS AND GLOUCESTER AND BIRMINGHAM NAVIGATION CO. v. WORCESTER CORPORATION. ATT.-GEN. v. SHARPNESS NEW DOCKS AND GLOUCESTER AND BIRMINGHAM NAVIGATION CO.

Phillimore J. [1913] 1 K. B. 422; 82 L. J. (K. B.) 187; 11 L. G. R. 157; 108 L. T. 517; 29 T. L. R. 142

**BRITISH COLUMBIA**—Laws of.

See CANADA—British Columbia.

**BRITISH INDIA.**

See INDIA.

**BROKER.**

See BANKER—Deposit of Securities—PRINCIPAL AND AGENT—Commission and STOCK EXCHANGE.

**BUILDING.**

See COVENANT, HIGHWAY, LOCAL GOVERNMENT, LONDON, and WATER—Supply.

**BUILDING AGREEMENT**—Reversion duty—

Benefit accruing to the lessor—Basis of ascertainment of.

See REVENUE—Reversion Duty.

**BUILDING CONTRACT**—Arbitration clause.See **ARBITRATION**—**Building Contract**.—**Contract**—Construction—Liquidated damages.See **SCOTTISH LAW**—**Building Contract**.*Sub-contractor*—*Right to sue builders*.

Specialists for the supply of door handles and door fittings held entitled to sue the builders, as in the circumstances the fact that the goods supplied had been used by the builders raised an implied promise by them to pay for the goods.

Decision of the C. A. 107 L. T. 746, reversed.

**RAMSDEN & CARR v. CHESSUM & SONS**• • **H. L. (E.) 30 T. L. R. 68 ; 58 S. J. 66****BUILDING SCHEME**—Breach of covenant—

Alteration in character of district.

See **COVENANT**.**BUILDING SOCIETY.***Banking Business*, col. 53.*Winding-up*. See **COMPANY**—**WINDING-UP**.**Banking Business.**

*Rules*—*Borrowing powers*—*Unlimited borrowing*—*Banking business*—*Ultra vires*—*Winding-up*—*Assets*—*Shareholders*—*Depositors*—*Trade creditors*—*Priorities*—*Building Societies Act, 1836* (6 & 7 Will. 4, c. 32), s. 1.

*In re BIRKBECK PERMANENT BENEFIT BUILDING SOCIETY* C. A. [1912] 2 Ch. 133 ;  
81 L. J. (Ch.) 769 ; 106 L. T. 968 ; [1912]  
W. N. 157 ; 28 T. L. R. 451

*Ultra vires*—*Loan*—*Right of society to sue for money lent*.

The liquidator of a building society, which as part of its operations had carried on a banking business, subsequently held by the Court to be ultra vires, brought an action for money had and received against the deft., a customer of the bank, to recover a sum in respect of overdrafts due from him. The deft. set up the defence that the contract under which the money was advanced to him was ultra vires and consequently that the money was not recoverable :—

*Held*, that the contract, being ultra vires, was one which the society was not competent to enter into, and therefore did not exist in point of law, but that there being nothing illegal or wrong in it, the deft. had no answer to an action for money had and received.

**BROUGHAM v. DWYER** Div. Ct.  
108 L. T. 504 ; 29 T. L. R. 234

— *Ultra vires*—*Set-off*.See **SET-OFF**—**Building Society**.**Winding-up.**See **COMPANY**—**WINDING-UP**.

**BURGH**—*Drainage and road authority*—*Flooding*—*Natural stream*—*Reparation*—*Negligence*—*Edinburgh Corporation*.  
See **SCOTTISH LAW**.

**BURIAL GROUND**—*Building upon disused burial ground*—*Sale or disposition "under the authority of any Act of Parliament"*—*Sale under order of the Charity Commissioners*—*Disused Burial Grounds Act, 1884* (47 & 48 Vict. c. 72), ss. 3, 5—*Charitable Trusts Act, 1853* (16 & 17 Vict. c. 137), s. 24—*Charitable Trusts Amendment Act, 1855* (18 & 19 Vict. c. 124), s. 29.

Trustees of a disused Congregational chapel and burial ground attached were desirous of selling them together as a building site, and had applied to the Charity Commrs. for an order sanctioning the sale. The Charity Commrs. were willing to make the order, if the Court would declare that such a sale would be "a sale under the authority of any Act of Parliament" within the meaning of the Disused Burial Grounds Act, 1884, and so exempt from the prohibition of building in that Act :—

*Held*, that the proposed sale under the order of the Charity Commrs. would not be "a sale or disposition under the authority of any Act of Parliament" within the meaning of s. 5 of the Disused Burial Grounds Act, 1884.

*Semble*, those words only apply, where the Act is expressly or by necessary implication the authority which makes the sale effectual as regards the land itself. *In re HOWARD STREET CONGREGATIONAL CHAPEL, SHEFFIELD*

**Astbury J. [1913] 2 Ch. 690 ; [1913] W. N. 299 ; 30 T. L. R. 16 ; 58 S. J. 68**

**BUTCHER**—*Sale of goods*—*Breach of warranty*—*Sale of diseased meat to butcher for resale*—*Loss of trade*—*Measure of damages*.

See **SALE OF GOODS**—**Warranty**.

**BUTTER**—*Shop*—*Weekly half-holiday*—*Exempted trade*—*Run honey*—*Confectionery*.

See **SHOPS**.**BY-LAWS.**

See **CANADA**—**British Columbia, HIGHWAY**—**Dedication, LOCAL GOVERNMENT**—**By-laws, SCHOOL, and TRAMWAY**.

**CAB**—**Taxicab**.

See **CRIMINAL LAW**—**Larceny Act, 1901, and MOTOR CARS**.

**CAR**—**Motor car**.See **BRIDGE**.— **Tramcar**.See **TRAMWAYS**.**CANADA.***Alberta*, col. 55.*Chattel Mortgage*, col. 55.*Irrigation Works*, col. 56.*Provincial Legislature, Powers of*, col. 56.*British Columbia*, col. 56.*By-laws*, col. 56.*Forfeiture*, col. 57.*Manitoba*, col. 58.



**CANADA—continued.**

Ontario, col. 58.

Company, col. 58.

Execution, col. 58.

Streets, col. 58.

Timber Licence, col. 59.

Quebec, col. 59.

Judgment. See FOREIGN JUDGMENT.

Railway, col. 59.

Seignior, col. 59.

Succession Duty, col. 59.

**Alberta.***Chattel Mortgage.*

*Damages for negligent sales of horses—North West Provinces Consolidated Ordinances, 1898, c. 34, ss. 2, 3, and Schedule—Construction—Restriction upon charges by mortgagees—Penalty for excess charges permissive—Bank Act, 1906, s. 91—Stipulated rate inoperative—Voluntary payments at unauthorized rate irrecoverable.*

In suits by mortgagors for an account of what was due by them under chattel mortgages credit was claimed in respect of damages for the mortgagee's negligence in the realization of certain horses seized and sold, and also for a penalty being treble the amount of an alleged excess charge by the bank for expenses and commission on the sales thereof. The stipulated rate of interest was 8 per cent. per annum; the mortgagees admitted that they could not enforce a higher rate than 7 per cent., while the mortgagors contended that only 5 per cent. could be recovered:—

*Held*, that (1.) the findings of the trial judge as to the deft.'s negligence in the sales and as to the consequent quantum of damages were not shewn to have been erroneous and therefore should not have been varied in appeal.

(2.) The limitation by North-West Provinces Consolidated Ordinances, 1898, c. 34, of a chattel mortgagee's charges in respect of seizures and sales relates only to certain indispensable acts specified in the schedule thereto. The parties to the mortgage were left free to contract with reference to any other expenses of realization which might be shewn to be reasonable and necessary; and no ground had been shewn for imposing the penalty, which was permissive and not imperative, since the deft.'s conduct had been reasonable and prudent.

(3.) Under Bank Act, 1906, s. 91, the stipulation for 8 per cent. interest was inoperative, and therefore, as no rate had been fixed by agreement, only the legal rate of 5 per cent. was recoverable. As regards past payments of interest at a rate not authorized by the Act the mortgagors were not entitled to recover back the excess which they had voluntarily paid. *McHUGH v. UNION BANK OF CANADA* - P. C. [1913] A. C. 299; 82 L. J. (P. C.) 65; 108 L. T. 273; 29 T. L. R. 305

**CANADA (Alberta)—continued.***Irrigation Works.*

*Road allowances—Dominion Lands Act, 1886 (R. S. C., 1886, c. 54)—North-West Irrigation Act, 1898—Statutory authority to intersect road allowances with canals—Obligation to build bridges at points of intersection.*

*REX v. ALBERTA RY. AND IRRIGATION CO.*  
P. C. [1912] A. C. 827; 82 L. J. (P. C.) 40; 107 L. T. 185; 28 T. L. R. 574

*Provincial Legislature, Powers of.*

*Alberta Act 1 Geo. 5. c. 9, held ultra vires—Civil rights existing and enforceable outside the province.*

The appellant bank received on deposit at its branch in New York the proceeds in London of a mortgage bond issue by the Alberta Ry. Co. guaranteed by the Government of Alberta. Under instructions from its head office in Montreal a special ry. account in respect thereof in the name of the treasurer of the province was opened at its Alberta branch (no money being sent there in specie and the account remaining under the control of the said head office) for purposes connected with railway construction wholly within the province as provided by Alberta Acts 16 and 49 of 1909 and subsequent Orders in Council and contracts.

Alberta Act 1 Geo. 5, c. 9, recited that the ry. had defaulted in payment of the interest on the bonds and in construction of the line, ratified the guarantee of the bonds, and enacted that the whole of the proceeds of the bonds, including the amount deposited with the appellant bank, should form part of the general revenue fund of the province, free from all claim of the ry. co. or their assigns, and should be paid over to the treasurer of the province.

In an action by the Crown and Provincial Treasurer to recover the amount of the deposit held by the appellant bank the latter pleaded that this Act was ultra vires:—

*Held*, that the bondholders, having subscribed their money for a purpose which had failed, were entitled to recover their money from the bank at its head office in Montreal, that this was a civil right existing and enforceable outside the province, and that the province could not validly legislate in derogation of that right. *ROYAL BANK OF CANADA v. REX* - P. C. [1913] A. C. 283; 82 L. J. (P. C.) 33; 108 L. T. 129; 29 T. L. R. 239

**British Columbia.***By-laws.*

*Municipal Act, 1892, s. 146—Municipal Clauses Act, 1897, ss. 243, 244—Construction—Validity of municipal by-laws—Validity of municipal debentures—Limitation—Law of British Columbia.*

By the British Columbia Municipal Act, 1892, s. 146, a municipal by-law under which debentures have been issued, and the interest thereon paid by the municipality for a year or more, cannot be invalidated or set aside on any

**CANADA (British Columbia)—continued.**

ground whatever. And ss. 243 and 244 of the Municipal Clauses Act, 1897, bar any cause of action within one year from the date thereof in respect of deviations by the municipality from the general plan of any public works authorized by its by-laws.

Such deviations are justified, when they are incidental to the carrying out of the authorized works and are made with a view to diminish unnecessary inconvenience and resulting claims to compensation. *WILSON v. DELTA CORPORATION*. P. C. [1912] A. C. 181; 82 L. J. (P. C.) 52; 107 L. T. 728.

*Municipal Clauses Act, 1896 (59 Vict. c. 55 British Columbia), s. 64—Charter—Railway—Charter bestowing right, franchise, or privilege—Statutory powers to construct and operate railway—Agreement with municipality—Consent of electors—Validity of by-law—Repugnancy between statutes of same year—Later chapter to prevail.*

The appellant co. had powers under the Consolidated Railway Company's Act, 1896, to construct and operate a street ry. or tramway in certain districts in British Columbia along such streets or roads as might be specified by the council of any municipality through which the same might be constructed, who might fix the location and terms of user over such streets or roads. By an agreement between the appellant co. and the corporation of Point Grey, which was in the districts referred to, the corporation consented to the appellant co. constructing a tramway along specified roads and, upon certain conditions, operating the same for forty years. The agreement also provided that if the corporation or other persons should desire thereafter to construct a tramway along other roads, the appellant co. should have, upon certain conditions, a prior right to construct and operate it. A by-law of the corporation authorized the affixing of the corporate seal to this agreement:—

*Held*, that the agreement and by-law did not amount to a charter bestowing a right, franchise, or privilege within the meaning of the Municipal Clauses Act, 1896, s. 64, and that they were not invalid in the absence of the assent of the electors referred to in that section.

*Held*, further, that if there was a repugnancy between the Consolidated Railway Company's Act, 1896, and the Municipal Clauses Act, 1896, the former, being the later chapter of the Statutes for that year, should prevail. *BRITISH COLUMBIA ELECTRIC RY. CO., LD. v. STEWART*. P. C. [1913] A. C. 816.

**Forfeiture.**

— Penalty—Relief against.  
See **FORFEITURE**.

**Fishing rights — Provincial Legislature, Powers of.**

It is not competent to the Legislature of British Columbia to authorize the Government of the province to grant by way of lease, licence or otherwise the exclusive right to fish in any part of the waters within the ry. belt, whether tidal or navigable or not, or in any part of the open sea within a marine league of the coast or

**CANADA (British Columbia)—continued.**

in arms of the sea and estuaries of rivers. *THE ATT.-GEN. FOR BRITISH COLUMBIA, WITH THE ATTS.-GEN. FOR ONTARIO, QUEBEC, NEW BRUNSWICK, MANITOBA, ALBERTA, AND SASKATCHEWAN AS INTERVENANTS v. THE ATT.-GEN. FOR CANADA*. P. C. 30 T. L. R. 144.

**Manitoba.**

— Agent to sell with option to purchase.

See **VENDOR AND PURCHASER**.

— Negligence—Railway crossing.

See **NEGLIGENCE—Onus of Proof**.

**Ontario.****Company.**

— Receiver—Set-off.

See **SET-OFF—Assignment**.

**Execution.**

*Fieri Facias—Unpatented mining claim in Ontario—Seizure and sale—Mining Act of Ontario (Stat. of Ontario, 8 Edw. 7, c. 21)—Execution Act (Stat. of Ontario, 9 Edw. 7, c. 47).*

Under a writ of fieri facias against the "goods and chattels, lands and tenements" of a judgment debtor, his undivided interests in a mining claim, in respect of which (under the Mining Act of Ontario, 1908) a certificate of record has been issued but no patent granted, is liable to seizure and sale. *CLARKSON AND FORGIE v. WISHART AND MYERS*. P. C. [1913] A. C. 828; 29 T. L. R. 778.

**Streets.**

*Electric wires and poles in streets, Power to erect—Municipality has no right of veto—Appellants' Incorporating Act (2 Edw. 7, c. 107), ss. 12, 13, 21—Railway Act of 1888, s. 90—Railway Act of 1906—Construction—Appeal from Ontario.*

*TORONTO AND NIAGARA POWER CO. v. NORTH TORONTO CORPORATION*

P. C. [1912] A. C. 834; 82 L. J. (P. C.) 14; 107 L. T. 182; 28 T. L. R. 563.

*Ontario Crown Timber Act (R. S. Ont., 1897, c. 32)—Right of licensee in land—Interest of licensee exigible under Ontario Execution Act, 1909 (9 Edw. 7, c. 47)—Assignee of licence after writ of fi. fa. issued—Execution.*

Under a writ of fieri facias against "the goods and chattels, lands and tenements" of a judgment debtor his interest in lands as a licensee thereof under the Crown Timber Act (R. S. Ont., 1897, c. 32), which includes a title thereto subject to the conditions of the licence is liable to seizure and sale under Ontario Execution Act (9 Edw. 7, c. 47).

*Glenwood Lumber Co., Ltd. v. Phillips* [1904] A. C. 405, followed.

Where execution is levied upon timber cut by an assignee of the licence under an assignment made subsequently to the issue of the writ, the levy is valid, unless it is shewn that the assignee acquired his title in good faith and for valuable consideration without notice of the execution and has paid his purchase-money. *McPHERSON v. TEMISKAMING LUMBER CO., LD.* P. C. [1913]

A. C. 145; 82 L. J. (P. C.) 113; 107 L. T. 664; 29 T. L. R. 80.

**CANADA (Ontario)—continued.***Timber Licence.**See above, Execution.***Quebec.***Judgment.*

— Action — Proceedings contrary to natural justice — Contract — Assignment — Defence of fraud — Exclusion of evidence of fraud by Canadian Court.  
*See FOREIGN JUDGMENT.*

*Railway.*

*Canadian railways—Level crossings—Duty to sound whistle—Duty to warn persons—Shunting engine—Breach of statutory duty—Cause of damage—Railway Act (R. S. of Canada, 1906, c. 37), ss. 274, 276.*

The Railway Act (R. S. of Canada, 1906, c. 37), s. 274, provides that "when any train is approaching a highway crossing at rail level, the engine whistle shall be sounded at least eighty rods before reaching such crossing, and the bell shall be rung continuously from the time of the sounding of the whistle until the engine has crossed such highway." The same Act by s. 276 provides that, "whenever in any city, town or village any train is passing over or along a highway at rail level, and is not headed by an engine moving forward in the ordinary manner, the company shall station on that part of the train . . . which is then foremost a person who shall warn persons standing on or crossing or about to cross the track of such railway";—

*Held*—(1.) that s. 274 does not apply to an engine engaged in shunting and never being in the course of its work more than eighty rods from any level crossing which it crosses;

(2.) that under s. 276 it is necessary only that the warning should be such as ought to be apprehended by a person of ordinary faculties in a reasonably sound, active, and alert condition, and that the time given to avoid the danger should be reasonably sufficient to enable a person of that description to avoid it;

(3.) that in an action for damages for personal injuries a plt. relying on the breach of a statutory duty must prove not only the breach but also that the breach caused the injuries  
**GRAND TRUNK RY. Co. v. MCALPINE - P. C.**

**[1913] A. C. 838***Seigniorv.*

*Title to seigniorv.—Claim of appellants to a trust in their favour—Canadian Act, 1840.*

**CORINTHE AND OTHERS v. ST. SULPICE, MONTREAL, SEMINARY - P. C. [1912] A. C. 872;**  
**82 L. J. (P. C.) 8; 107 L. T. 104;**  
**28 T. L. R. 549**

*Succession Duty.*

*Indirect taxation—Ultra vires—British North America Act, 1867 (30 Vict. c. 8), s. 92.*

By s. 92 of the British North America Act, 1867, "In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say, (inter alia) direct taxation within the province in order to

**CANADA (Quebec)—continued.**

the raising of a revenue for provisional purposes":—

*Held*, that s. 1375 of the Revised Statutes of Quebec, 1909, imposing succession duties on the death of the owner of property, is ultra vires the provincial Legislature, as the taxation is not direct taxation. **COTTON AND ANOTHER v. REX. REX v. COTTON AND ANOTHER - P. C.**  
**(29 T. L. R. 71)**

**CANAL—Bridge—Canal made across highway—Highway carried by bridge over canal—Standard of repair.**  
*See BRIDGE.*

*Canal company—Corporation—Successors and assigns—Undertaking—Assignment—Dissolution—Reversion to grantors—Liability to perform statutory obligations—Woking U. D. C. (Basingstoke Canal) Act, 1911 (1 & 2 Geo. 5), c. 1011.*

In 1777 an Act of Parliament was passed for making a canal from Basingstoke to Chertsey. It incorporated a co. by the name of the Company of Proprietors of the Basingstoke Canal Navigation, authorized them to construct the canal, to make by-laws, demand tolls, and acquire land. All persons were to have the right to use the canal on payment of tolls. The co. were to make and maintain bridges. Throughout the Act, in conferring rights or imposing obligations on the co., the words "their successors and assigns" were added.

The canal was made and navigation carried on till 1866, when a winding-up order was made. In 1874 the liquidator, with the sanction of the judge, sold the canal to S. A. The word "undertaking" was not used in the conveyance, but possession was taken and tolls levied and received. In 1878 the co. was dissolved by an order of the Court. S. A. sold various portions of the land, and the last purchaser of the canal and undertaking was the L. & S. W. Canal, Ltd., who executed a mortgage thereof to W. Carter. In 1894 an Act was passed with reference to the canal, but it did not create a new corporation or revive the former rights and obligations.

The canal bridges fell into disrepair, and the Woking U. D. C. obtained an Act of Parliament in 1911 which authorized them to do the repairs and recover the costs from "the company."

On a summons to ascertain the true construction of this Act Sargent J. *held* that the L. & S. W. Canal, Ltd., were liable to pay certain costs and repairs, and that the property was subject to a charge for the amount (77 J. P. 481).

The L. & S. W. Canal, Ltd., appealed.

The C. A. said that the co. had no power to assign their undertaking; nothing passed to S. A. by the conveyance of 1874; on the dissolution the land of the co. reverted to the original grantors, who, however, made no claim to it, and their right of entry had been barred by the Statute of Limitations; S. A. had thus acquired the legal fee simple in the canal free from any of the obligations or rights of the co.; the L. & S. W. Canal, Ltd., were owners of the canal, but were not bound to keep it up or do repairs, and could not demand tolls. The Act of 1911 did not impose any fresh liability; therefore no

**CANAL**—*continued*.

liability attached upon either the L. & S. W. Canal, Ltd., or Carter, and the appeal must be allowed. *In re WOKING U. D. C. (BASING-STOKE CANAL) ACT, 1911* - C. A. [1913] W. N. 346; 30 T. L. R. 135

— Railway and Canal Commission.

*See* APPEAL.

**CANONS OF 1603**—Canons 86 and 125.

*See* ECCLESIASTICAL LAW.

**CAPITAL**—Income or.

*See* SETTLED LAND and WILL.

**CAPITAL MONIES.**

*See* SETTLED LAND — Capital or Income.

**CAPTURE**—Insurance (Marine)—Insurance of cargo against capture—Constructive total loss—Anticipation of capture—Sale of cargo by assured.

*See* INSURANCE (MARINE)—Loss.

**CARETAKER**—Non-provided school—Powers of management.

*See* SCHOOL—Non-provided School.

**CARGO**—Insurance of—Shipping.

*See* INSURANCE (MARINE).

**CARRIAGE**—Negligence—Breach of duty—Horse and carriage hired by husband—Vicious horse—Injury to wife—Knowledge of owner of horse—Control of carriage.

*See* NEGLIGENCE—Dangerous Animal.

**CARRIAGE OF GOODS.**

*See* RAILWAY.

**CASE STATED.**

*See* JUSTICES.

**CASES**—*Cases affirmed, reversed, followed, overruled or judicially considered during the year 1913, Table of, p. lxxi.*

**CATALOGUE**—Misleading catalogue—Auction—Lot put up for sale—Mistake by bidder as to subject-matter—Action for price—Parties not ad idem.

*See* SALE OF GOODS—Auction.

**CERTIFICATE**—Building contract—Reference to building owner's architect.

*See* ARBITRATION—Building Contract.

— National Insurance Act, 1911, ss. 14, 67—Sickness benefit—Rule of approved society that only a certificate of a panel doctor will be accepted—Ultra vires—Dispute between member of approved society and society.

*See* INSURANCE (NATIONAL) — Approved Society.

— Special jury—"Immediately after verdict."

*See* COSTS.

*Will—Evidence—True copy—Whether use of word "certify" necessary—Ceylon Evidence Ordinance, 1905.*

C.C.D.

**CERTIFICATE**—*continued*.

The provisions of the Ceylon Evidence Ordinance, 1905, relating to the evidence of certified copies of public documents ought to be read as applicable to certificates given before the date of the ordinance, but in such cases the use of the word "certify" is not essential, provided that it appears that the officer intended to attest the accuracy of the copy.

Judgment of the Supreme Court of Ceylon affirmed. *MUNIANDAY CHETTY v. MUTTU CARUPPEN CHETTY* - P. C. 30 T. L. R. 41

— Workmen's compensation—Certifying surgeon

— Refusal to give certificate—Appeal to medical referee—Jurisdiction.

*See* WORKMEN'S COMPENSATION.

**CERTIORARI.**

*See* JUSTICES — Disqualification and RATES—Owner, Rating of.

**CEYLON**—Crown grant of land—Exception of mines and minerals.

*See* MINES—Reservations.

**CHAIRMAN**—Parish council—Duration of office—New council—Annual meeting—Right of chairman to vote at election of his successor.

*See* LOCAL GOVERNMENT — Parish Council.

**CHANCERY DIVISION**—Practice—Action tried in Chancery Division with witnesses—Form of order—Appeal—Schedule of evidence.

*See* APPEAL—Court of Appeal.

**CHAPEL**—Charity—Hospital—Consecrated chapel—Rebuilding—New chapel—Effect of consecration.

*See* CHARITY—Hospital Chapel.

**CHARGE**—Company—Charge to secure future advances—Creation of charge—Charge by deposit—Registration.

*See* COMPANY—Charge.

— Equitable.

*See* MORTGAGE—Priority.

— Floating.

*See* MORTGAGE—Priority.

— Will.

*See* WILL.

**CHARITY.**

*Charity Commissioners. See* BURIAL GROUND.

*Cy-près, col. 63.*

*Hospital Chapel, col. 64.*

*Parish Priest. See* IRISH LAW—Charity.

*Trustee, col. 66.*

**Charity Commissioners.**

— Sale under order of the—Disused burial ground—Sale or disposition "under the authority of any Act of Parliament."

*See* BURIAL GROUND.

**CHARITY—continued.****Cy-près.***Gift for a school—Failure of particular object.*

A testator gave all his property to his three daughters and their children, his will continuing as follows: "But if all die without issue"—which event happened—"I give and bequeath the whole principal of their fortunes, the interest to be given to a schoolmaster as a part of his salary. The school and his house to be erected by voluntary subscriptions from the landowners and proprietors of the parish of A., and the school and house to be placed on a hill near to the gate that divided B. and W. Commons . . . The master to teach five days in a week and six hours each day, Saturday and Sunday excepted, to be able to instruct the pupils in Latin and Greek and all the elementary parts of mathematics, both pure and mixed, the W. scholars to go free, the rest to pay 2s. 6d. each at Midsummer and Christmas as quarter pence." There was evidence that there was no reasonable chance of any such school being established at or in the neighbourhood of the place where the testator directed it to be built:—

*Held* (subject to the Attorney-General intimating within a limited time his desire for an inquiry whether and how far it would be possible to carry out the directions in the will) that the gift fell within the class of cases where on the true construction of the will no paramount general charitable intention could be inferred, but the gift was for a particular purpose; and that, as it was impossible to carry out that purpose, the gift failed altogether. *In re WILSON. TWENTYMAN v. SIMPSON*

*Parker J. [1913] 1 Ch. 314; 82 L. J. (Ch.) 161; 108 L. T. 321; [1913] W. N. 12; 57 S. J. 452*

*National school—Conveyance of site under the Schools Sites Act, 1841 (4 & 5 Vict. c.38)—Trust for education of the poor—School for promoting education in the principles of the Established Church—Failure of particular intention.*

Appeal from an order of the C. A. [1912] 1 Ch. 667.

The appeal was opened in July, 1913, but was adjourned to enable the parties to come to a settlement, and in the result a new scheme, which had received the sanction of the Att.-Gen., was agreed upon.

The H. L., by consent, discharged the order of the C. A., and made an order in terms of the agreement arrived at by the parties. *PRICE AND OTHERS v. ATT.-GEN. H. L. (E.) [1913] W. N. 337; 30 T. L. R. 110; 58 S. J. 171*

*"Sermon," Endowment for—Increase in the income—Cy-près—Religious purposes—Trustees—Scheme.*

By a deed of 1580 land was assured to trustees to the intent that the rents should be employed for or towards the charges of a sermon once every year to be made in the parish church of West Ham. The rents had largely increased, and by an order made in 1912 by Parker J. in this action it was declared that such part of the income as

**CHARITY (Cy-près)—continued.**

was not required for payment for the sermon ought to be applied cy-près the objects of the gift for the sermon. The old parish of West Ham was continuous with the present borough, containing some 300,000 inhabitants. This area was now divided into nineteen ecclesiastical parishes, of which the parish served by the old parish church, containing some 25,000 inhabitants, was one. On a summons taken out to determine the principles upon which the scheme should proceed:—

*Held*, that the charity was religious in its object and that no part of the income ought to be applied for a non-religious purpose, such as lectures in the town-hall for the moral or intellectual improvement of the inhabitants or in aid of a public library; but that the whole income might properly be applied in or towards payment of the stipends of one or more assistant curates to serve in the church and parish, and subject thereto in or towards the expenses incurred by the vicar in providing for the services of the church, the visitation of the poor, or the religious instruction of the inhabitants, including children and young persons.

*Held*, also, that the scheme ought to be confined to the parish served by the old parish church of West Ham.

*Held*, also, that the vicar and churchwardens and persons to be appointed by them and by the bishop of the diocese were proper persons to be appointed trustees, but that the mayor of West Ham or the overseers or persons to be appointed by the borough council ought not to be appointed.

*Held*, also, that there was no objection to the vicar of the parish himself preaching the annual sermon and receiving a proposed fee of ten guineas therefor. *In re AVENON'S CHARITY. ATT.-GEN. v. PELLY - Warrington J. [1913] 2 Ch. 261; 82 L. J. (Ch.) 398; 109 L. T. 98; [1913] W. N. 169; 57 S. J. 626*

**Hospital Chapel.**

*Consecrated chapel—Rebuilding—New chapel—Effect of consecration.*

Land once consecrated is consecrated for ever, or at any rate until an Act of Parliament divests it of its sacred character; and no secular Court has power to grant a faculty for the use of it for secular purposes, although the Ecclesiastical Courts have jurisdiction to grant faculties, in their discretion, for the erection of buildings and the like in consecrated ground in certain circumstances.

*In re Bideford Parish [1900] P. 314, and Corke v. Rainger and Higgs [1912] P. 69, approved in preference to Campbell v. Paddington Parishioners (1852) 2 Rob. Eccl. 558.*

About 1750 a society (which had no trust deed and was not incorporated) was formed of the subscribers towards the foundation of an infirmary for the benefit of the sick and lame poor of certain counties, and in 1752 a lease of land was granted to trustees for the society for a term of years subsequently renewed until 1951.

On this land an infirmary was erected, and one of the rooms in the building was appropriated as a chapel and was consecrated by the bishop of the diocese in 1754. From 1754

**CHARITY (Hospital Chapel)—continued.**

Church of England services were regularly conducted in the chapel by a chaplain who was a clergyman of that Church and down to 1859 was appointed by the governors of the society, receiving 10*l.* a year under an endowment of the chaplaincy. In 1859 a lady settled a yearly stipend on the chaplain, who was to be appointed by her trustees, and from 1882 to 1906 a further but smaller annual sum was paid to him out of the society's general funds.

In 1897 (when the society had a written constitution embodied in statutes and rules which recognized and provided for services of the Church of England only in the chapel) the citizens of N. in which the infirmary was situate, subscribed 100,000*l.* to commemorate the Diamond Jubilee of Queen Victoria by building a new infirmary on the site and in lieu of the existing building. But a citizen of N. offered 100,000*l.* to the governors towards building a new infirmary on a site different from that of the old infirmary on condition that the subscriptions to the new infirmary building fund became available for the general purposes of the institution and that another 100,000*l.* should be subscribed. This offer was accepted, the lease of the old infirmary was surrendered under authority of an Act of Parliament which also enabled the corporation of N. to give a new site for the proposed infirmary, and, in 1901, another donor gave 100,000*l.* to be used for the building or endowment of the new infirmary as might seem best to the governors. The new site was conveyed to trustees as a site for the new infirmary, but without any express declaration of trust, and on this site, under the supervision of a building committee appointed by the governors, the new infirmary was built at a cost which absorbed the two sums given by the two individual donors. The plans provided for a chapel, the cost of building which came out of the subscribed funds generally, but the organ, altar, reredos, pulpit, lectern, furnishings and windows were provided by special donations from members of the Church of England. The building committee never considered the question of consecration. On the invitation of the house committee of the infirmary and the petition of the trustees the bishop of the diocese consecrated the chapel:—

*Held*, that, as the trustees had the bare legal estate and no powers, and the house committee's functions, under the society's constitution, were confined to the administration and management of the infirmary, the invitation to the bishop would have been ultra vires the committee, if the old chapel had not been consecrated; but that, as the prima facie intention of all parties was to reproduce as nearly as might be the state of things existing in the old infirmary, the committee had performed merely the ministerial duty of inviting the bishop to perform the ceremony necessary to give effect to that intention by replacing the old consecrated chapel through the consecration of the new one, and that an action for a declaration that the chapel was held on trust

**CHARITY (Hospital Chapel)—continued.**

for the general purposes of the charity, including the holding therein of religious services, whether of the Church of England or otherwise, failed. *SCOTTON v. BOWDEN*

*Farwell L.J.* [1913] 1 Ch. 518; 82 L. J. (Ch.) 322; 108 L. T. 637; 29 T. L. R. 262

**Parish Priest.**

*See IRISH LAW—Charity.*

**Trustee.**

*Custodian trustee—Public Trustee Act, 1906* (6 Edw. 7, c. 55), ss. 2, 4—*The Public Trustee Rules, 1912*, r. 30. [*W. N.*, 1912 (April 27), pp. 173-176.]

By an indenture of Oct. 4, 1866, it was declared that certain persons and others the trustees for the time being acting in the trusts of the deed should stand possessed of all donations and bequests which should be made to them for the benefit of any funds then or thereafter constituted by the authority or with the consent of the Wesleyan Methodist Conference to promote the acquisition and erection, or relief or benefit of or in connection with chapels and other hereditaments settled upon the trusts therein mentioned, or other like trusts, and of all donations and bequests for the benefit of, or in connection with, some particular property, settled upon such or the like trusts as aforesaid, upon trust, as to all such donations and bequests as to or upon which any trust, charge or obligation was created or imposed by the donors or testators thereof, to apply such donation accordingly, and to apply the same for the benefit of one or more of the funds mentioned in the deed as the said Conference should from time to time direct. Another deed poll of Oct. 7, 1910, confirmed and extended the former deed to all realty and personality, and provided that the trustees should hold any realty or personality of which they should be appointed custodian trustees upon and subject to the regulations prescribed by s. 4 of the Public Trustee Act, 1906, and the rules and regulations thereunder. In July, 1911, the Charity Comrs., in pursuance of the Charitable Trusts Act, 1872, granted to the trustees of these deeds a certificate of incorporation under the above name.

The testator, who died in 1909, by his will gave to the trustees for the time being of the Wesleyan Methodist Chapel at Bampton Grange a legacy of 50*l.*, to be invested and the income applied in keeping the chapel in repair. On Jan. 30, 1913, these trustees purported to appoint the deft. corporation to be custodian trustees of the investments representing the legacy; and doubts having arisen whether they could be properly so appointed, the present summons was taken out for the determination of the question.

The Public Trustee Act, 1906, s. 2, sub-s. 5, provides that the Public Trustee shall not accept any trust exclusively for religious or charitable purposes, and that nothing in the Act or the rules shall abridge or affect the powers or duties of the official trustee of charity lands or official trustees of charitable funds. Sect. 4, by sub-s. 1, provides that, subject to rules, the Public

**CHARITY (Trustee)—continued.**

Trustee may, if he consents to act as such, be appointed to be custodian trustee of any trust; and by sub-s. 3 provides that "the provisions of this section shall apply in like manner as to the Public Trustee to any banking or insurance company or other body corporate entitled by rules made under this Act to act as custodian trustee, with power for such company or body corporate" to charge certain fees.

Sargant J. held—(1.) that the restrictions imposed on the Public Trustee by s. 2 were personal to him and were not imported into s. 4 so as to be applicable to the deft. corporation, nor were the powers or duties of the official trustees of charity funds in any way abridged or affected by the appointment; (2.) that the appointment was properly made by the appointors; and (3.) that the deft. corporation was such a body corporate as was referred to in r. 30 of the Public Trustee Rules, 1912, made under the Act. *In re CHERRY'S TRUSTS. ROBINSON v. TRUSTEES OF WESLEYAN METHODIST CHAPEL PURPOSES (REGISTERED)*

Sargant J. [1913] W. N. 297; [1914] 1 Ch. 83; 30 T. L. R. 30; 58 S. J. 48

**CHARTER—Municipality.**

See CANADA—British Columbia.

— Ship — Collision — Damage — Time charter — Sub-charter — Bailee — Claim for bill of lading freight.

See SHIPPING—Collision.

**CHARTERPARTY—Shipping.**

See SHIPPING.

**CHATTEL MORTGAGE**—Damages for negligent sales of horses—Laws of Canada.

See CANADA—Alberta.

**CHEQUE.**

See BANKER.

"**CHILDREN**"—Gift to—Exclusion of illegitimate children—Will—Construction.

See WILL.

**CHOSE IN ACTION**—Assignment—Debt—Sufficiency of notice to debtor—Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6.

By s. 25, sub-s. 6, of the Supreme Court of Judicature Act, 1873, it is provided that "Any absolute assignment, by writing under the hand of the assignor . . . of any debt . . . of which express notice in writing shall have been given to the debtor . . . shall be and be deemed to have been effectual in law . . . to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same . . ."

On Dec. 5, 1907, the defendant owed the sum of 808*l.* to one Derham. On that day Derham by a deed of arrangement absolutely assigned to Denney and Gasquet (the trustees of the deed) all his personal property.

On April 8, 1908, the trustees' solicitors wrote to the defendant saying that "The trustees of the deed of arrangement dated the 5th of December, 1907, and executed by Mr. Walter

**CHOSE IN ACTION—continued.**

Derham, have instructed us to apply to you for an account showing all dealings between yourself and Mr. Walter Derham. The reason of this application is that there appears from Mr. Derham's books to be a considerable debt due from you to him for money advanced."

On June 24, 1910, one Metcalfe was by deed appointed a new trustee of the deed of Dec. 5, 1907, in substitution for Gasquet, but no notice of this deed was given to the defendant. In an action brought by Denney, Gasquet, and Metcalfe to recover the debt of 808*l.* from the defendant:—

Held, that the letter of April 8, 1908, constituted an express notice in writing of the assignment of the debt of 808*l.* within the meaning of the sub-sect., inasmuch as, although not worded with the precision of a formal notice, it indicated with sufficient certainty to the defendant that Derham had executed a deed which assigned to the then trustees the debt formerly due to him, and that the debt, when the amount was ascertained, must be paid to the trustees and not to Derham; and the names of the assignees were sufficiently disclosed, as there was an express and accurate reference to the deed to which the trustees were parties. *DENNEY, GASQUET, AND METCALFE v. CONKLIN* - Atkin J. [1913] 3 K. B. 177; 82 L. J. (K. B.) 953; 109 L. T. 414

[1913] W. N. 191; 29 T. L. R. 598

*Landlord and tenant—Lease—Covenant to repair—Waste—Assignment of right to damages—Construction—Unassignability of right to damages for waste—Implied covenant by tenant not to commit waste.*

A right of action for damages in the nature of waste being in respect of a tort is, on grounds of public policy, not capable of assignment.

By a lease dated in 1906 certain business premises were demised to the plt. for a term of forty-one and a half years. The lease contained the usual covenants by the lessee to repair. The plt. took the lease as trustee for a co., and the co. entered into occupation of the premises. On Mar. 19, 1909, a receiver and manager of the co.'s property was appointed in a debenture-holders' action, and on Mar. 25, 1909, the co. went into voluntary liquidation. On May 2, 1911, the co. by its liquidator and the receiver entered into an agreement with the deft. for the sale to him of the fixed plant and machinery of the business. By clause 14 of the agreement it was provided that the deft. was to be entitled to occupy the premises for the purpose of removing the plant and machinery until Sept. 29, 1911, upon certain conditions, one of which was that he was not to do anything which, if done by the lessee, would be a breach of the covenants and conditions contained in the lease. It was also provided that the deft. was to make good to the satisfaction of the lessor all damages done in removing the tenant's fixtures agreed to be sold. The agreement was approved by the Court in the debenture-holders' action and the deft. was let into possession of the premises. Whilst in possession the deft. committed certain acts which were alleged to constitute waste. Upon his going out of possession on Sept. 29, 1911, the plt.

**CHOSE IN ACTION—continued.**

was let into possession, and by a deed dated Nov. 6, 1911, the co.'s interest in the premises was released to the plt., together with the benefit of clause 14 of the agreement of May 2, 1911, and the full power to enforce the obligations under that clause :—

*Held*, upon the construction of the assignment of Nov. 6, 1911, that it did not purport to assign to the plt. any right of action for tort in respect of waste, but only in respect of breaches of covenant.

*Held*, also, that if the assignment had purported to assign any such right, the assignment would have been invalid, inasmuch as such a right is not assignable, according to the established rule which has not been changed.

*Fitzroy v. Cave* [1905] 2 K. B. 364, followed. Dictum of Lord Esher M.R. in *Whitham v. Kershaw* (1885) 16 Q. B. D. 613, 616, that "There is an implied covenant on the part of the tenant not to commit waste," dissented from.

Decision of Warrington J. (1912) 57 S. J. 27, affirmed. *DEFRIES v. MILNE* - C. A. [1913] 1 Ch. 98; 82 L. J. (Ch.) 1; 107 L. T. 593

**CIVIL COMMOTION.**

*See* INSURANCE (PLATE GLASS).

**CIVIL SERVICE**—Rights of officer in the Civil Service on superannuation — Appeal from New South Wales.

*See* SUPERANNUATION.

**CLERGY.**

*See* ECCLESIASTICAL LAW.

**CLERGY DISCIPLINE ACT, 1892**, ss. 2, 12, 13.

*See* ECCLESIASTICAL LAW.

**CLERGY DISCIPLINE ACT RULES, 1892**, rr.

72, 95.

*See* ECCLESIASTICAL LAW.

**CLUB**—*Expulsion of member—No sufficient notice of charge against member—Injunction.*

The plt. claimed an injunction restraining the defts., representing the committee of a club to which the plt. belonged, from interfering with his enjoyment of the use and benefit of the club. The committee had passed a resolution, in accordance with one of the rules, recommending the plt. to send in his resignation (which, if not complied with, would have been followed up by his expulsion) owing to his alleged disregard of the rules of the club :—

*Held*, that the plt. was entitled to the injunction claimed, as he had had no notice of the real reasons upon which the committee had acted in coming to the resolution in question, and thus had no opportunity of being heard thereon. *D'ARCY v. ADAMSON* - Warrington J. 29 T. L. R. 367; 57 S. J. 391

**"COACHMAN"**—Inland Revenue—Male servants.

*See* REVENUE—Excise.

**COAL**—*Carrying for sale—Weights and measures—By-law—Delivery of coal previously ordered at office—Scales and weights in wagon—Weights*

**COAL—continued.**

*and Measures Act, 1889* (52 & 53 Vict. c. 21), s. 28.

A local authority made a by-law under the Weights and Measures Act, 1889, that "the person in charge of every vehicle carrying or bearing coal for sale shall carry therewith a weighing instrument of a form approved by the local authority together with correct weights."

A coal merchant's carter carried from his master's yard in a wagon for delivery at the houses of two customers five sacks of coal which had been previously ordered by the customers, three sacks by one and two by the other at the coal office :—

*Held* by Ridley and Pickford JJ. (*Avory J. dubitante*), that since the carter was carrying the coal in fulfilment of specific orders already given, he was not carrying it for sale within the meaning of the by-law, notwithstanding there had been no unconditional appropriation of specific coal to the customers. *HUNTING v. MATTHEWS* - Div. Ct. 11 L. G. R. 723; 23

Cox, C. C. 444; 108 L. T. 1019; 77 J. P. 331

*Sale and delivery—Statute containing temporary and permanent provisions—Subsequent statute continuing whole Act for further term—Mistake—1 & 2 Will. 4, c. lxxvi., s. 52—1 & 2 Vict. c. ci., s. 1.*

By s. 52 of 1 & 2 Will. 4, c. lxxvi., if a carman or driver of a cart laden with coals for sale or to be delivered to the purchaser thereof within the cities of London and Westminster or within a certain distance thereof shall not have placed in, on, or under his cart a perfect weighing machine, then such carman or driver and the seller of the coals shall be liable to a penalty. Other sections of the Act, suspending the rights of the Corporation of the City of London under certain charters and statutes and instead thereof giving them power to levy a fixed duty upon coals brought into London, were limited to a term of seven years from Dec. 31, 1838. By 1 & 2 Vict. c. ci., after reciting that the term of seven years, during which the provisions of 1 & 2 Will. 4, c. lxxvi., were thereby directed to continue in force, would expire on Dec. 31, 1838, it was enacted that "the said Act and all the . . . provisions . . . therein contained . . . shall be and the same is and are hereby continued for the further term of seven years from December 31, 1838," and all the provisions in the said Act contained to take effect at the end of the term of seven years therein mentioned shall take effect as if the term of fourteen years had been inserted therein instead of the term of seven years.

The Act of William IV. was continued by subsequent Acts down to 1889, when the London coal duties were abolished, and the Act was no longer continued. Upon an information under s. 52 of 1 & 2 Will. 4, c. lxxvi., for delivering coal to a purchaser from a cart without having thereon a perfect weighing machine :—

*Held*, that the Act, 1 & 2 Vict. c. ci., continuing the Act of William IV. for the further term of seven years, and the subsequent continuing Acts, must be read as refer-



**COAL**—*continued.*

ring to those sections only of the Act which would have expired, if they had not been continued, and not to the whole Act, and that therefore s. 52, which did not require to be continued, was still in force, and that the information was rightly laid under it. *HOUGHTON v. FEAR BROTHERS, LD.* Div. Ct. [1913]

2 K. B. 343; 82 L. J. (K. B.) 650; 11 L. G. R. 731; 109 L. T. 177; [1913] W. N. 110; 77 J. P. 376; 29 T. L. R. 410

**COAL MINES.**

*See MINES.*

**COAL MINES ACT, 1911.**

*See MINES—Coal Mines and SETTLED LAND—Improvements.*

**COAL MINES (MINIMUM WAGE) ACT, 1912.**

*See MINES—Coal Mines.*

**CO-DEFENDANTS.**

*See COSTS—Defendants, DEFAMATION—Privilege, and DISCOVERY.*

**CODICIL**—Will—Construction.

*See WILL.*

**COLLIERIES.**

*See MINES and SETTLED LAND—Improvements.*

**COLLISION.**

*See SHIPPING—Collision.*

—Nets of fishing vessel, Collision with — Construction of clause "Collision . . . with ship or vessel."

*See INSURANCE (MARINE)—Collision.*

**COLLISIONS AT SEA (REGULATIONS FOR PREVENTING), arts. 19, 11, 24.**

*See SHIPPING—Collision.*

**COLLUSION**—Divorce—Definition.

*See DIVORCE.*

**COLONY**—Colonial judgment—Defendant born in Colony — "Subject" of Colony — Defendant not resident or domiciled there—Enforceability of judgment.

*See FOREIGN JUDGMENT.*

**COLUMBIA (BRITISH)**—Laws of.

*See CANADA.*

**COMMISSION**—Agreement to give an option to purchase and also a commission on sale. *See VENDOR and PURCHASER.*

**COMMIXTIO** — Ship — Affreightment — Bill of lading—Liability for unmarked goods.

*See SHIPPING—Bill of Lading.*

**COMMON** — *Rights of common — Trespass by commoner—Serious injury to waste—Suit by fellow commoner—Injunction.*

One commoner can maintain an action against a fellow commoner for wrongful acts by which the former's right of common is destroyed or interfered with, or which unless stopped would grow into a legal right to the prejudice of the rights of common of the other commoners.

**COMMON**—*continued.*

The defts., who were only entitled to have common of pasture for their cattle levant and couchant over the waste of the manor, were carting goods and refuse to and from their tenement over, and depositing refuse on, a part of the waste of the manor, and admittedly intended to acquire a right of way by prescription:—

*Held*, that they could be restrained by injunction at the suit of a fellow Commoner, and that he need not prove actual pecuniary damage.

*KING v. BROWN, DURANT & Co.* — *Joyce J.* [1913] 2 Ch. 416; 82 L. J. (Ch.) 548; 109 L. T. 69; [1913] W. N. 240; 29 T. L. R. 691; 57 S. J. 754

*Rights of common — Turbary — Estovers — Nuisance — Abatement — Excessive trespass — Cutting down trees—Injunction—Damages.*

The commoners of a manor may abate a nuisance, which wholly excludes them from exercising their rights of common over the lord's waste, without first resorting to the Courts for relief. But if the nuisance only amounts to a partial exclusion, a sufficiency of common being left for the exercise of common rights, the commoners ought not to take the law into their own hands: their proper remedy is to apply to the Courts for a declaration of their rights. This rule applies whether the right of common alleged to be infringed is for common of pasture, or of turbary, or of estovers.

Where therefore tenants of a manor in assertion of a claim to common of turbary and of estovers over certain heath lands, alleged to be waste of the manor, entered on the heath lands and cut down trees, there being sufficient heath lands for the exercise of the rights claimed, if any:—

*Held*, that the trespass was unjustifiable and that the lord was entitled to an injunction and damages.

The principle of *Sadgrove v. Kirby* (1795) 6 T. R. 483, applied. *HOPE v. OSBORNE*

*Neville J.* [1913] 2 Ch. 349; 82 L. J. (Ch.) 457; 11 L. G. R. 825; 109 L. T. 41; [1913] W. N. 201; 77 J. P. 317; 29 T. L. R. 606; 57 S. J. 702

**COMMOTION, CIVIL.**

*See INSURANCE (PLATE GLASS).*

**COMPANY.**

*Action, col. 73.*

*Allotment, col. 74.*

*Arrangement, Scheme of, col. 74.*

*Articles of Association, col. 74.*

*Assignment of Debts, col. 74.*

*Auditors, col. 74.*

*Charge, col. 75.*

*Criminal Law, col. 76.*

*Debentures, col. 76.*

*Debts, col. 80.*

*Director, col. 80.*

*Guarantee. See GUARANTEE.*

**COMPANY—continued.**

*Income Tax.* See REVENUE.  
*Insurance, col. 82.*  
*Lease, col. 82.*  
*Meeting, col. 82.*  
*Memorandum of Association.* See below, *Shares.*  
*Mining.* See STANNARIES.  
*Misfeasance, col. 84.*  
*Misrepresentation.* See below, *Prospectus.*  
*Petition.* See BANKRUPTCY—Act of Bankruptcy.  
*Poll.* See Meeting.  
*Principal and Agent.* See PRINCIPAL AND AGENT.  
*Private Company.* See APPORTIONMENT.  
*Promoters, col. 85.*  
*Prospectus, col. 86.*  
*Proxy.* See Meeting.  
*Receiver.* See Debentures.  
*Reconstruction, col. 87.*  
*Reduction of Capital, col. 87.*  
*Reorganization of Capital, col. 88.*  
*Sale, col. 88.*  
*Scheme of Arrangement, col. 88.*  
*Shares, col. 88.*  
*Stannaries.* See STANNARIES.  
*Tramway.* See TRAMWAY.  
*Transfer of Business, col. 93.*  
*Underwriting, col. 93.*  
*Will.* See APPORTIONMENT.  
*Winding-up.* See COMPANY—WINDING-UP.

**Action.**

*Parties—Action brought in name of company without authority—Stay—Costs.*

The deft. and O. were the sole directors of and holders of an equal number of shares in the plt. co. O. alleged that the deft. as a director was doing something which was injurious to the co., and therefore an action was brought against him in the name of the co., at the instance of O., asking for his removal from the office of director, and in the alternative for an injunction restraining him from dealing with or so conducting the co.'s business as to injure or jeopardize its goodwill. There had been no resolution of the co. or directors authorizing the bringing of the action, and from the constitution of the board it was known that no authority could be obtained:—

*Held,* on motion by the deft., that the name of the co. should be struck out as plts., and that the action should be stayed, and, further, that the plts.' solicitors should be ordered to pay the costs of the action. *WEST END HOTELS SYNDICATE, LD. v. BAYER*

*Warrington J. 29 T. L. R. 92*

**COMPANY—continued.****Allotment.**

See below, *Director — Prospectus — Shares.*

**Arrangement, Scheme of.**

See below, *Reduction of Capital, Shares and COMPANY—WINDING-UP—Reconstruction.*

**Articles of Association.**

See below, *Director and COMPANY—WINDING-UP — Contributories, List of, and Preferential Claims.*

**Assignment of Debts.**

*Mortgage or charge—Assignment of debt—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 93.*

A limited co., in consideration of an advance from their bankers, executed an assignment which, after reciting that the co. were entitled to 80*l.* 7*s.* from the deft., that it had been agreed that that debt should be assigned to the bankers, and that by a letter of even date the deft. had been directed by the co. to pay the debt in question to the bankers, assigned unto the bankers so much of the deft.'s debt "as may be necessary to indemnify the assignees" for the amount advanced by them to the co. After executing that deed the co. wrote to the deft. requesting him to pay the debt due to them to the bankers. A few days later the co. went into voluntary liquidation. The assignment to the bankers was not registered. The liquidator claimed to recover the debt from the deft., but the deft. insisted upon paying the debt to the bankers:—

*Held,* that the liquidator was entitled to recover, inasmuch as by s. 93 of the Companies (Consolidation) Act, 1908, the unregistered assignment was void as against him.

It is impossible for the parties to a transaction by way of mortgage or charge to alter the effect of s. 93 of the Companies (Consolidation) Act, 1908, by adopting a form which does not accord with the real transaction between them. *SAUNDERSON & Co. v. CLARK* - - - *Lush J. 29 T. L. R. 579*

*Charge on book debts—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 93.*

*LADENBURG & Co. v. GOODWIN, FERREIRA & Co., LD.* - *Pickford J. [1912] 3 K. B. 275; 81 L. J. (K. B.) 1174; 18 Com. Cas. 16; 19 Mans. 383; 28 T. L. R. 541; 56 S. J. 722*

See below, *Charge.*

**Auditors.**

*Duties—Legal knowledge—Balance sheet—Ultra vires payments.*

*Misfeasance summons.*

On May 7, 1912, the liquidator of the co. issued this summons against the directors, Myring Lembcke and Vanderpump (since deceased), and the auditors, claiming damages for various acts of misfeasance.

The summons as against Lembcke was dismissed on the ground of diplomatic privilege

**COMPANY (Auditors)—continued.**

[1913] W. N. 329, and a consent judgment for an agreed sum was taken against Myring.

Vanderpump's estate was not represented.

The case against the auditors was that in breach of their duties under the Companies Act, 1907 (7 Edw. 7, c. 50), s. 19, and the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 113, they had passed balance sheets containing (inter alia) (a) payments for commission for placing shares, and (b) payments to the solicitor, Vanderpump, for costs of incorporation and subsequent costs without calling attention (a) to the fact that the payment of commission was not authorized by the articles, namely, Table A (1906), and was therefore illegal under the Companies Act, 1900 (63 & 64 Vict. c. 48), s. 8, and the Companies Act, 1907, s. 8, and (b) that the solicitor being a director could not charge profit costs.

Asbury J. said that auditors were bound to make themselves acquainted with their duties under the co.'s articles and under the Companies Acts for the time being in force, and if damage resulted from the balance sheets not shewing the true financial condition of the co. the onus was on the auditors to shew it was not caused by any breach of their duty: *Spackman v. Evans* (1868) L. R. 3 H. L. 171, 236; *Leeds Estate Building and Investment Co. v. Shepherd* (1887) 36 Ch. D. 787, 802; *In re London and General Bank* (No. 2) [1895] 2 Ch. 673, 682-85; *In re Kingston Cotton Mill Co. (No. 2)* [1896] 2 Ch. 279, 284, 287; *Thomas v. Deconport Corporation* [1900] 1 Q. B. 16, 21.

On the facts his Lordship was not satisfied that the auditors failed in their duty in passing the commission in their first balance sheet or in passing the same entry in their second balance sheet after the question had been raised and the first balance sheet approved by the shareholders, or that any damage had resulted.

The question as to the profit costs was more doubtful, but having regard to the entries in the minutes, and the fact that Vanderpump was not appointed a director until three months after incorporation, and to the question as to how far the auditors were bound to ascertain that in this co. there was no power for a director to contract with the co., and to appreciate that his profit costs were therefore unauthorized, his Lordship thought he ought not to make the auditors responsible for these amounts.

He was not satisfied that the shareholders would have taken any proceedings against the directors under this head even if the point had been expressly placed before them, failing which no damage would have resulted from the auditors' action.

The summons would be dismissed, but, in the circumstances, without costs. *In re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LD.*

Asbury J. [1913] W. N. 358; 30 T. L. R. 146

**Charge.**

*Creation of charge—Charge by deposit—Registration—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 93.

The date of the creation of a mortgage or charge by a co. (within twenty-one days after

**COMPANY (Charge)—continued.**

which registration is required by s. 93 of the Companies (Consolidation) Act, 1908) is the date when the instrument of mortgage or charge is executed and not the date when any money is subsequently advanced on it.

In Sept., 1910, a co. deposited with a bank certain title deeds of landed property, and a sealed but undated memorandum of charge to secure future advances, which were from time to time subsequently made by the bank. On June 14, 1911, the manager of the bank filled in that date, and on July 3, 1911, the memorandum was, for the first time registered with the Registrar of Joint Stock Companies. The co. subsequently went into winding-up:—

*Held*, that the transaction was void, as a security, against the liquidator and creditors of the co., for want of registration in due time under s. 93 of the Act. *ESBERGER & SON, LD. v. CAPITAL AND COUNTIES BANK - Sargant J.* [1913] 2 Ch. 366; 82 L. J. (Ch.) 576; 109 L. T. 140

See above, Assignment of Debts.

**Criminal Law.**

— Indictment against.

See LONDON—Nuisance.

— Prosecution of for breach of Factory Acts.

See FACTORY AND WORKSHOP.

**Debentures.**

*Assets, Distribution, col. 76.*

*Insurance. See INSURANCE — Mortgage.*

*Priority. See MORTGAGE.*

*Receiver, col. 77.*

*Redemption, col. 78.*

*Registration, col. 79.*

*Sale, col. 79.*

**Assets, Distribution.**

*Floating charge—Pari passu—Interest paid to some holders down to a later date than to others — Distribution of assets in debenture-holder's action—Claim by other holders to be paid difference in interest in full.*

Appeal from a decision of Sargant J., [1913] 1 Ch. 499.

This was a debenture-holder's action in which under the usual order the property had been sold, the proceeds of sale being insufficient for payment in full of the principal and interest secured by the debentures.

The debentures were all of one series and there was no trust deed. By each debenture the co. covenanted to pay the registered holder his principal and interest. It was provided that the debentures were all to rank *pari passu* as a first charge on the property charged without any preference or priority over one another, and such charge was to be a floating security.

Some of the debenture-holders had been paid interest by the co. while carrying on its business as a going concern down to a later date than others, and the question now raised was whether the latter were entitled to be paid in full out of

**COMPANY (Debentures)—continued.**

the assets the difference between the amount of interest received by them and the amount received by the debenture-holders who had been paid interest down to a later date before making any further division of the assets.

Sargant J. *held* that the debenture-holders who had received less interest than the others were not entitled to have the assets applied in equalizing the amount of interest before any further distribution was made.

Debenture-holders who had received less interest than the others appealed.

The C. A. affirmed the decision of Sargant J., and dismissed the appeal. *In re MIDLAND EXPRESS, LD., PEARSON v. THE CO. -C. A. [1913]*

W. N. 306; [1914] 1 Ch. 41;

30 T. L. R. 38; 58 S. J. 47

**Insurance.**

— Re-insurance—Contract of indemnity—Liquidation—Scheme of arrangement—Limit of liability of re-insurer.

See **INSURANCE (MORTGAGE)**.

**Priority.**

— Debenture — Priority—Construction — Floating charge—Specific mortgage subject to provisions of first security.

See **MORTGAGE—Priority**.

**Receiver.****Appointment.****Jeopardy—Meaning of.**

Where a co. is not being pressed or threatened by outside creditors, and there is no risk of its assets being seized on their behalf, the mere fact that the security of the debenture-holders is very inadequate is not a sufficient reason for appointing a receiver on the ground of jeopardy.

*In re Victoria Steamboats, Ltd.* [1897] 1 Ch. 158, distinguished. *In re New York TAXICAB CO. SEQUIN v. THE CO. - Swinfen Eady J. [1913] 1 Ch. 1; 82 L. J. (Ch.) 41; 19 Mans. 389; 107 L. T. 813*

**Reserve fund—Proposed distribution amongst shareholders — No default under debentures — Jeopardy—Receiver.**

In 1888 a co. under the powers of its memorandum and articles of association acquired certain mines, and created a debenture issue of 80,000*l.* which was a floating charge in common form protected by the usual trust deed. In 1912 the mines were worked out; the land, plant and machinery at the mines were worthless; the co.'s issued share capital was exhausted; and practically its only asset was a reserve fund of 10,000*l.*, representing accumulated profits, which the co. proposed to distribute amongst its shareholders.

The debenture interest had been regularly paid, and no event had happened which either under the provisions of the debentures or of the trust deed entitled the debenture-holders to enforce their security:—

*Held*, that the case came within the principle of jeopardy, and that the debenture-holders were entitled to have a receiver appointed.

*In re New York Taxicab Co.* [1913] 1 Ch. 1, distinguished. *In re TILT COVE COPPER CO.,*

**COMPANY (Debentures)—continued.**

LD. TRUSTEES, EXECUTORS, AND SECURITIES INSURANCE CORPORATION, LD. v. THE CO.

Neville J. [1913] 2 Ch. 588; 82 L. J. (Ch.) 545; 109 L. T. 138; [1913] W. N. 242; 57 S. J. 773

**Liability.**

*Appointment by debenture-holders—Notice of preferential claim — Subsequent payments to ordinary creditors in carrying on business—Loss of assets — Liability to preferential creditor—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 107.*

A receiver and manager appointed by debenture-holders, who, after notice of any claim that is preferential under s. 107 of the Companies (Consolidation) Act, 1908, pays away the company's assets to ordinary creditors in the process of carrying on the company's business without making or attempting to make any provision for that preferential claim, is guilty of a breach of that section and is liable in damages accordingly. *WOODS v. WINSKILL - Astbury J. [1913] 2 Ch. 303; 82 L. J. (Ch.) 447; [1913]*

W. C. & Ins. R. 558; 109 L. T. 399;

57 S. J. 740

**Rent.**

In Sept., 1912, P. and the co. entered into an agreement for the tenancy by the latter of a shop for a term of three years at a rent of 50*l.* a year. In 1912 the present action was brought by a debenture-holder of the co. On Nov. 22, 1912, the Court appointed a receiver of the assets charged. The receiver entered into possession of the shop and paid the quarter's rent due at Christmas, and P. now applied that he should be ordered to pay, out of the proceeds of the sale of the assets, including the co.'s interest in the shop (but not personally), the quarter's rent due at Lady Day. Half of this rent was in respect of the time when the receiver was in beneficial occupation of the shop. In Feb., 1913, he had contracted to sell the assets, including the tenancy, and this contract had been approved by the Court.

*Hand v. Blow* [1901] 2 Ch. 721, referred to.

Sargant J. *held* that there was no privity of estate or obligation between the debenture-holders or the receiver with the landlord, and dismissed the application with costs.

*Hay v. Swedish and Norwegian Ry. Co.* (1892) 8 T. L. R. 775, followed. *In re J. W. ABBOTT & CO. ABBOTT v. J. W. ABBOTT & CO. - Sargant J. [1913] W. N. 284; 30 T. L. R. 13*

**Redemption.**

*Winding-up—Principal immediately payable — Payment off—Enforcing right to redeem.*

Where the principal moneys secured by debentures have become immediately payable according to a condition indorsed on the debentures, on the ground that an order has been made for the winding up of the co., the co. or the guarantors of the loan are entitled to redeem the security, and the debenture-holders have no option to refuse payment, unless the debenture itself so provides.

*In re General Motor Cab Co.* (56 S. J. 573) explained. **CONSOLIDATED GOLDFIELDS**

**COMPANY (Debentures)—continued.**

**OF SOUTH AFRICA v. SIMMER & JACK EAST, LD.** - Swinfen Eady J. 82 L. J. (Ch.) 214; 20 Mans. 142; 108 L. T. 488; [1913] W. N. 41; 57 S. J. 358

**Registration.**

**Extension of time—Companies Act, 1900** (63 & 64 Vict. c. 48), ss. 14, 15—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 286—*Interpretation Act, 1889* (52 & 53 Vict. c. 63), s. 38, sub-s. 2.

Sect. 15 of the Companies Act, 1900, empowered the Court to extend the time for the registration of debentures in certain cases. Sect. 286 of the Companies (Consolidation) Act, 1908, repealed the Companies Act, 1900 :—

*Held*, that the right given by s. 15 of the Act of 1900 to apply to the Court for an extension of time was preserved, notwithstanding the repeal of that Act, by the operation of s. 38, sub-s. 2, of the Interpretation Act, 1889. *In re LUSH & Co.* - Farwell L.J. 108 L. T. 450; [1913] W. N. 39; 57 S. J. 341

**Trust deed—Registration—Deed securing bonus to allottees of debenture stock—Companies Act, 1900** (63 & 64 Vict. c. 48), s. 14, sub-s. 1.

In order to give additional benefits to the allottees of an issue of its debenture stock, a co. also issued "bonus certificates" to them secured by a trust deed.

The trust deed recited that the co. was negotiating an arrangement for certain dealings in land, and by clause 1 the co. covenanted to pay the trustees one-fourth of all profits therefrom not exceeding the nominal amount of debenture stock issued. Clause 2 provided that meanwhile one-fourth of all such profits in each year should be paid to the trustees before Sept. 30 following with interest thereon in default; and by clause 4 the co. charged all its rights and interests both present and future under or by virtue of such arrangement, and all profits from time to time received or derived therefrom, with the payment of all moneys from time to time payable under clauses 1 and 2, and as a security for the due performance by the co. of all the obligations imposed upon it by that deed. Clause 5 provided for the issue of bonus certificates to the allottees of stock and for transfers and dealings therewith :—

*Held*, that the trust deed constituted a mortgage or charge for the purpose of securing an issue of debentures, and was also a floating charge on the undertaking or property of the co., and therefore required registration under the Companies Act, 1900, s. 14, sub-s. 1 (a), (d). *HOARE v. BRITISH COLUMBIA DEVELOPMENT ASSOCIATION* - Neville J. 107 L. T. 602; [1912] W. N. 235

**Sale.**

**Trust deed—Power of modification—Majority of debenture-holders—Debentures payable *pari passu*—Resolution sanctioning sale by company of all its assets and division amongst debenture-holders accepting lowest price—Invalidity.**

Debentures were issued under a trust deed

**COMPANY (Debentures)—continued.**

providing for their payment *pari passu*. The provisions of the trust deed might be modified by a resolution passed by a three-fourths majority of the debenture-holders in general meeting :—

*Held*, that it was not competent for such a majority to sanction a sale by the co. of all its assets and a division of the proceeds, not rateably amongst all the debenture-holders, but amongst those willing to accept the lowest price for their debentures. *In re NEW YORK TAXI-CAB CO. SEQUIN v. THE CO.*

*Swinfen Eady J.* [1913] 1 Ch. 1; 82 L. J. (Ch.) 41; 19 Mans. 389; 107 L. T. 813

**Debts.**

*See above, Assignment of Debts and Charge.*

**Director.**

**Appointment—Articles of association—Board of directors—Powers—Managing director—Power to revoke appointment.**

The articles of association of the deft. co. provided that the board of directors might appoint a managing director for such period as they deemed fit, and might revoke the appointment. The board appointed the plt. to be managing director upon the terms of an agreement which provided that he should hold the office so long as he should remain a director of the co. and retain his due qualification and efficiently perform the duties of the office. Subsequently, while the plt. was still fulfilling the conditions of the agreement, the board revoked the appointment. The plt. sued the co. for damages for breach of agreement :—

*Held*, that the articles of association did not empower the board to revoke the appointment at will, but for good cause only, and that the plt. was entitled to recover damages against the co.

*Bluett v. Stutchburys, Ltd.* (1908) 24 T. L. R. 469, distinguished. *NELSON v. JAMES NELSON & SONS, LD.* - Scrutton J. [1913] 2 K. B. 471; 82 L. J. (K. B.) 827; 20 Mans. 161; 108 L. T. 719; [1913] W. N. 130; 29 T. L. R. 461; 57 S. J. 501

**Appointment—Articles of association—Power to appoint directors—Concurrent power of company—Prescribed maximum number—Foreign company shareholder—Proxy—Ultra vires—Chairman—One poll on separate resolutions—Companies (Consolidation) Act, 1908** (8 Edw. 7, c. 69), ss. 68, 285.

The articles of association of an English co. in which an American co. held a majority of shares provided that casual vacancies in the office of director might be filled up by the board, and that the directors might appoint additional directors up to the prescribed maximum, which was seven. The articles also provided for votes being given either personally or by proxy appointed in writing or under the common seal of a corporation. Only persons entitled to vote at any general meeting were to act as proxies, except that a co. which was a member might by proxy authorize a representative to act at meetings for them.

**COMPANY (Director)**—*continued*.

H. P. R., vice-president of the American co., who held a power of attorney from that co., issued a requisition and notice for an extraordinary general meeting of the shareholders of the English co., at which he was chairman, and voted as proxy, and which meeting, on a poll, purported to pass two resolutions increasing the number of directors to sixteen and electing additional directors:—

*Held*, in an action by the English co., that the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the co. which had by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors. An interim injunction was granted against the defts. restraining them from acting as directors of the English co.

*Held*, further, that the questions of H. P. R.'s right to act as chairman and to vote stood on the same footing, and the exception in the articles practically reproducing s. 68 of the Company's (Consolidation) Act, 1908, the word "company" had the meaning assigned to it by s. 235 of the same Act and was limited to a co. within the meaning of the latter section. The words "corporation" and "company" were not interchangeable, and H. P. R. was not qualified to attend the meeting.

When two resolutions before a meeting have been separately voted upon and a poll has been demanded, a separate poll must be directed to be taken on each resolution. **BLAIR OPEN HEARTH FURNACE CO., LD. v. REIGART**  
Eve J. 108 L. T. 665; 29 T. L. R. 449;  
57 S. J. 500

*Appointment — Light railway — Board of Trade Order — Meaning of "share capital" — Directors without qualification — Allotment by directors so appointed — Validity — Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 85, 89, 92, 99.*

A Board of Trade Order incorporating a light ry. co. nominated three persons as the first directors and required them to make a further nomination. The first directors did not do so, and the co. resolved that the number be reduced to three. The validity of this resolution depended on whether the words "share capital" in s. 6 of the Order meant "issued capital" or "authorized capital." Subsequently two of the directors retired. The remaining director filled the vacancies by appointing two persons as directors. Neither of these persons had the necessary share qualification, and one of them was not a shareholder. Later on, at the same meeting, these three directors allotted the necessary qualifying shares to the two new directors in the bona fide belief that they were entitled to do so:—

*Held* (1.), that in s. 6 of the Order the context shewed that "share capital" meant "issued capital," and therefore the resolution reducing the number of directors was valid; (2.) that though the single remaining director had power under ss. 89 and 92 of the Companies Clauses Consolidation Act, 1845, to appoint two new

**COMPANY (Director)**—*continued*.

directors, yet as they only subsequently acquired the necessary qualification, their appointment was invalid; and (3.) that the allotment by a board of three directors of whom two were invalidly appointed was a good allotment under s. 99 of the same Act. **CHANSEL COLLIERIES TRUSTS, LD. AND OTHERS v. DOVEN, ST. MARGARET'S, AND MARTIN MILL LIGHT RY. CO.**  
Sargant J. 30 T. L. R. 156

*Disqualification — Articles of Association — "Concerned in or participates in the profits of any contract with the company" — Companies Act, 1862 (25 & 26 Vict. c. 89), Sched. I., Table A, clause 57 — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), Sched. I., Table A, clause 77 (e).*

Where a director was under the articles of association of a co. to be disqualified from acting as such, if he was concerned in or participated in the profits of any contract with the co.:—

*Held*, that the director was disqualified where he had been proved to have been concerned in the contract with the co., and accordingly it was not necessary to determine whether he had participated in the profits of such contract or not. **STAR STEAM LAUNDRY CO. v. DUKAS**  
Farwell L.J.

108 L. T. 367; [1913] W. N. 39; 20  
T. L. R. 269; 57 S. J. 399

**Guarantee.**

— Indemnity—Guarantee of debt of a company  
— Debenture of company held by guarantor—Statute of Frauds.  
*See* GUARANTEE.

**Income Tax.**

— Servant of limited company—Head office of "department."  
*See* REVENUE—Income Tax.

**Insurance.**

— Insurance company.  
*See* below, **Transfer of Business, COMPANY — WINDING-UP — Contributions, List of, and REVENUE — Income Tax.**  
— Insurance of mortgage owned by a company  
Insured company in liquidation—Power of liquidator to assign.  
*See* INSURANCE (MORTGAGE).

**Lease.**

*Lease by company of all its property—Intra vires — Power of majority of shareholders to approve lease — Minority bound in absence of fraud—Dominion Statute, 1900 (63 & 64 Vict. c. 98), s. 1 (a) — Construction — Appeal from Quebec.*

**DOMINION COTTON MILLS CO. AND OTHERS v. AMYOT AND OTHERS** — P. C. [1912]  
A. C. 546; 81 L. J. (P. C.) 233; 19 Mans.  
363; 106 L. T. 934; 28 T. L. R. 467

**Meeting.**

*Poll—Adjournment ad hoc — Proxies to be lodged forty-eight hours before meeting "or adjourned meeting" — Poll fixed for future date*

**COMPANY (Meeting)—continued.**

→ *No adjournment of meeting—Validity of proxies lodged forty-eight hours before poll.*

A poll demanded at a co. meeting was directed to be taken at a future date, but the meeting itself was not adjourned:—

*Held*, that the mere postponement of the poll was not an adjournment ad hoc of the meeting within the meaning of an article allowing the lodgment of proxies forty-eight hours before a meeting "or adjourned meeting," but the original meeting continued for the purpose of the poll, and no fresh proxies could be lodged.

*Reg. v. Wimbledon Local Board* (1882) 8 Q. B. D. 459, 462, 464, 465, followed. *SHAW v. TATE CONCESSIONS, LD. - Swinfen Eady J.* [1913] 1 Ch. 292; 82 L. J. (Ch.) 159; 20 Mans. 104; 108 L. T. 487; [1913] W. N. 26; 29 T. L. R. 261; 57 S. J. 322

*Proxy—Articles of Association—Appointment by corporation—Common seal—Foreign company having no seal—Validity.*

This was a motion by the plt. co. to restrain the deft. co. and certain of their directors from excluding three persons from any meeting of directors of the deft. co., or interfering with them in the exercise of their duties as directors.

The question was whether a resolution submitted to the annual general meeting of the deft. co., appointing these three persons as directors, had been properly rejected, and this depended on whether certain votes had been properly rejected.

It was objected by the plts., first, that certain votes given by a proxy who was not himself a member of the co. were improperly admitted, since by the articles only members of the co. were entitled to act as proxies for other members. No objection was taken at the time on this ground, and article 73 of the deft. co.'s articles provided, "No objection shall be made to the validity of any vote except at the meeting or poll at which such vote shall be tendered, and every vote not disallowed at such meeting or poll, and whether given personally or by proxy, shall be deemed valid for all purposes whatsoever."

The second objection was that a vote given by a person under a resolution passed by the directors of an English co. to act as its representative, under s. 68 of the Companies (Consolidation) Act, 1908, was invalid because a copy only of the resolution had been produced.

The third objection was that votes given on behalf of the plt. co. by their attorney, under a power of attorney, executed by two directors of the plt. co., empowering him to vote and appoint proxies, had been improperly rejected, their attorney, acting under this power of attorney, having in fact appointed himself proxy. The plt. co. was incorporated under South African law and had no common seal. These votes were rejected at the meeting, on the ground that the form of proxy did not comply with article 75 of deft. co.'s articles of association, which provided that "the instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in that behalf, or, if such appointer is a Corporation, under its common seal."

**COMPANY (Meeting)—continued.**

Sargant J. held that the two first objections failed, but that the third objection must succeed. The law of England, no doubt, required a corporation aggregate to have a common seal, but that law did not affect foreign corporations, and in his opinion Article 75 must be read as applying only to corporations in this country and not so as practically to disfranchise a foreign corporation which was a shareholder but had no common seal, and was not required to have one. These votes were therefore improperly rejected, and the result was that the resolution was duly passed and the plts. were entitled to the relief they claimed. *COLONIAL GOLD REEF, LD. v. FREE STATE RAND, LD.* Sargant J. [1913] W. N. 328; 30 T. L. R. 88; 53 S. J. 173

**Memorandum of Association.**

See below, Shares.

**Mining.**

See STANNARIES.

**Misfeasance.**

*Winding-up—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 215—*Company purchasing its own shares—Compromise of managing director's claims—Ultra vires—Loss to company—Breach of trust—Statute of Limitations—Conversion—Trustee Act, 1888* (51 & 52 Vict. c. 59), s. 8, sub-s. 1.

The misfeasance section (215) of the Companies (Consolidation) Act, 1908, creates no new right, and only provides, as did s. 165 of the Companies Act, 1862, a summary procedure for enforcing against directors or other officers of a co. liability for breach of trust or other misconduct which, prior to the Act, might have been enforced by action; and to bring a case within the section it is essential to shew that pecuniary loss resulted to the co. from the acts or defaults constituting the alleged misfeasance. *In re Canadian Land Reclaiming and Colonizing Co., Coventry and Dixon's Case* (1880) 14 Ch. D. 660, 668, followed, *Cwendish Bentinck v. Fenn* (1887) 12 App. Cas. 652, applied.

It is ultra vires for a co. to purchase its own shares, or to advance capital of the co. to a director to do so. *Trevor v. Whitworth* (1887) 12 App. Cas. 409, applied.

A bona fide compromise of reasonable claims made by a managing director against the co., by payment of a sum of money out of capital of the co., is not illegal.

Where a policy-holder surrendered his policy to the insurance co. on the terms that the amount paid to him for the surrender should be invested in shares of the co.:—

*Held* by Palles C.B. (affirming the decision of Barton J.), that this was a conversion within s. 8, sub-s. 1, of the Trustee Act of 1888, which would prevent the policy-holder, a director, from setting up the Statute of Limitations as a defence.

A bona fide transaction with a co. impeachable only on the ground of being ultra vires will be set aside only on the terms that both parties be restored to their original

**COMPANY (Misfeasance)—continued.**

rights. *In re COMPANIES (CONSOLIDATION) ACT, 1908, AND THE IRISH PROVIDENT ASSURANCE CO., LD., AND JOHANNA BRADLEY*

*G. A. (Ir.) [1913] 1 I. R. 352*

**Misrepresentation.**

*See below, Prospectus.*

**Petition.**

*See BANKRUPTCY—Act of Bankruptcy.*

**Poll.**

*See Meeting.*

**Principal and Agent.**

— Money borrowed by managing director of a company on its behalf—Absence of authority to borrow.

*See PRINCIPAL AND AGENT.*

**Private Company.**

*See APPORTIONMENT.*

**Promoters.**

*Purchase by promoter to resell to company—Fiduciary position of promoter—General equitable obligations to company—No power to modify by articles—Registration as private company—Intention to bring in cash shareholders—Contract for sale of lease to company—No binding agreement for lease—Right of company to rescission—Contract not apportionable.*

Whether promoters are acquiring any asset as trustees for a co. or intended co. is a question of fact. If the intention throughout is that they are to sell to the co., at a profit, the assets which they are acquiring, the natural inference is that they are not intending to be trustees for the co., but vendors only; and the fiduciary duties involved in that relationship are distinct from those of ordinary out-and-out trusteeship.

Statement of the law on this point in *Palmer's Company Precedents* (10th ed.), vol. i. p. 118, disapproved.

Promoters cannot avoid the general equitable obligations recognized and enforced in *Erlanger v. Sombrero Phosphate Co.* (1878) 3 App. Cas. 1218, by provisions inserted in the articles of association; and where, though a co. is formed as a private co., the intention throughout is to bring in outside cash shareholders, the situation is essentially identical with one in which the co. is a public co.

In Jan., 1912, the defts. entered into negotiations for the acquisition of a lease of certain premises, with a view to selling them to a co. which they were promoting, and which was registered as a private co. in Mar., 1912. The articles of association, which were prepared on the instructions of the defts., provided that the co. should forthwith enter into the agreement for purchase; and this it did. The board of directors at the time was not an independent one, and the defts. had not a legally binding agreement for the lease. The lease was, however, subsequently executed and assigned to the co. Outside cash shareholders were brought in, and ultimately an independent board was constituted. On Oct. 30, 1912, the co. commenced an action against the

**COMPANY (Promoters)—continued.**

defts. for a declaration that they were liable as promoters to make good to the co. such part of the purchase-money of the property as was attributable to the benefit of the lease agreed to be granted to them, with consequential relief:—

*Held*, that the provisions of the articles and the registration of the co. as a private co. did not protect the defts. against claims by it. But *held*, also, that the co. had suffered no loss; that while it might have been entitled to rescission of the whole contract, the latter could not be apportioned so as to entitle it to a diminution of price without any counterbalancing equivalent; that the defts. were not trustees for the co. of the lease or the prospect of obtaining it, and that the action therefore failed. *OMNIUM ELECTRIC PALACES, LD. v. BAINES - Sargant J.*

109 L. T. 206; [1913] W. N. 245; 82 L. J. (Ch.) 519; 29 T. L. R. 696; 57 S. J. 754

**Prospectus.**

*Contract to take shares—Rescission—Fraudulent misrepresentation—Quotation in prospectus of report by one of the directors—Responsibility of company for truth of statements in report.*

A co. formed for the purpose of acquiring a rubber estate issued a prospectus which quoted a report made before the incorporation of the co. by one of the directors who was stated to be acquainted with the locality. The prospectus also stated that no portion of the price of the estate would be paid until the co. had received an independent report confirming the statements of the director. The report stated that the estate contained wild rubber trees in such quantities that immediate profits were assured.

In an action brought by a shareholder against the co. for rescission of his contract to take shares the pursuer averred by his condescendence that he had applied for the shares in reliance upon the statements in the prospectus and the report, and that he had since learned that those statements were false and fraudulent, and in particular that there was no rubber on the estate. The co. pleaded that these averments were irrelevant to support the conclusions of the summons:—

*Held*, that the co. was responsible, at all events, for the absence of fraud in the representations made by its agent, and that the pursuer was therefore entitled to a proof of his averments.

*Per Lord Shaw of Dunfermline*: Prima facie, a co. which issues a prospectus embodying a report made by a director is responsible for the truth of, as well as for the absence of fraud in, the statements of facts contained in the report.

Interlocutors of the Lord Ordinary and the First Division of the Ct. of Sess. in Scotland 1913 S. C. 183, reversed. *MAIR v. RIO GRANDE RUBBER ESTATES, LD. - H. L. (Sc.) [1913]*

A. C. 553; 109 L. T. 610; [1913] W. N. 235; 29 T. L. R. 692; 57 S. J. 728

*Shares—Misstatements in prospectus—Repudiation of shares.*

Contract by the plt. to take shares in the deft. co. rescinded on his application on the ground of serious misstatements in the pro-



**COMPANY (Prospectus)—continued.**

spectus upon the faith of the accuracy of which he had agreed to take the shares. *TAYLOR v. THE OIL AND OZOKERITE CO., LD.*

Joyce J. 29 T. L. R. 515

*Statement in lieu of prospectus—Mis-statements and omissions—Allotment of shares—Void or voidable—Statutory requirements—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 82, 281.*

Appeal from a decision of Warrington J. [1913] W. N. 209.

This was a motion by the Canadian Agency, Ltd., under the Companies (Consolidation) Act, 1908, s. 32, to rectify the register by removing the name of the applicants therefrom as the holders of certain shares.

The co. was incorporated in 1912 and did not issue a prospectus on or with reference to its formation, but prior to allotment filed a statement in lieu of prospectus, which however was alleged to contain serious mis-statements and omissions in several of the particulars required by s. 82 of the Companies (Consolidation) Act, 1908, and Sched. 11. The applicants relied on the fact that no sufficient statement in lieu of a prospectus had been filed by the co. before the allotment of the shares. It was not suggested that the applicants had applied for their shares on the faith of the particulars contained in the filed statement.

Warrington J. held that the fact that the statement contained mis-statements and omissions did not make the allotment of shares void.

The applicants appealed.

The C. A. dismissed the appeal, and said that the Act did not provide that the statement should contain the whole truth. If a statement was filed which was not illusory, the registrar could not inquire into the truth of it, but had to certify under s. 87 that the co. was entitled to commence business. It could not be that Parliament intended that everything done under that certificate should be null and void, if there were a mistake in the statement. The appeal must be dismissed. *In re BLAIR OPEN HEARTH FURNACE CO., LD.* - C. A. [1913] W. N. 340; 58 S. J. 172

— Underwriting letter—Variations in prospectus.

See below, Underwriting.

**Proxy.**

See Meeting.

**Receiver.**

See above, Debentures, Receiver.

**Reconstruction.**

See below, Reduction of Capital, and COMPANY—WINDING-UP.

**Reduction of Capital.**

*Forfeited shares—Form of minute—Denoting numbers of shares.*

*In re THOMAS WOLFF & SON (1907), LD.*

Neville J. [1912] W. N. 286; 57 S. J. 146

*Scheme of arrangement—Reorganization of share capital—Alteration of preferential rights*

**COMPANY (Reduction of Capital)—continued.**

*defined by memorandum—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 45, 46, 120.*

*In re PALACE HOTEL, LD.* - [1912]

2 Ch. 438; 81 L. J. (Ch.) 695; 19 Mans.

293; 107 L. T. 521; [1912] W. N. 182;

56 S. J. 649

*Use of words "and reduced"—Common seal,*

*In re ANDREW KNOWLES & SONS, LD.*

Neville J. [1912] W. N. 300; 57 S. J. 212

**Reorganization of Capital.**

See Shares.

**Sale.**

*Sale of undertaking and assets in consideration of shares in purchasing company—Distribution of proceeds—Power in memorandum of association—Resolutions—Special resolution—Dissentients—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 192.*

A co. which has power under its memorandum of association to sell all or any part of its business or property to another co. in consideration of shares in that co., and also power to distribute such shares among its own members, does not fulfil the requirements of s. 192, sub-s. 1, of the Companies (Consolidation) Act, 1908, by passing merely an ordinary resolution sanctioning such a sale and special resolutions providing for voluntary liquidation and the mode of distribution of the compensation shares.

To comply with s. 192, sub-s. 1, there must at least be a special resolution authorizing the liquidator to accept shares as the consideration for the sale. In the absence of such a special resolution there would be no special resolution to which the provision relating to dissentients in sub-s. 3 of s. 192 could apply.

*Seem*, that a special resolution passed on a show of hands—no poll being demanded—by a three-fourths majority, as provided by s. 69 of the Act, and subsequently confirmed, is sufficient to satisfy the requirements of s. 192 and validate the sale, notwithstanding a provision in the co.'s articles of association that every special resolution should, unless resolved on without a dissentient, be decided by poll.

*Bisgood v. Henderson's Transvaal Estates, LD.* [1908] 1 Ch. 743, applied. *ETHERIDGE v. CENTRAL URUGUAY NORTHERN EXTENSION RY. CO., LD.* - Joyce J. [1913] 1 Ch. 425;

82 L. J. (Ch.) 333; 20 Mans. 172; 108 L. T. 362; [1913] W. N. 71; 29 T. L. R. 323; 57

S. J. 341

**Scheme of Arrangement.**

See above, Reduction of Capital; below, Shares; and COMPANY—WINDING-UP—Reconstruction.

**Shares.**

*Alteration of rights defined by memorandum—Scheme of arrangement—Increase of capital—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 45, 120.*

A scheme of arrangement which alters any rights defined by the memorandum of associa-

**COMPANY (Shares)—continued.**

tion, must satisfy the conditions laid down by s. 45 of the Companies (Consolidation) Act, 1908, although the scheme does not include the consolidation of different classes of shares or the division of shares into shares of different classes.

*In re Palace Hotel, Ltd.* [1912] 2 Ch. 438, not followed. *In re DOECHAM GLOVES, LD.*

*Neville J.* [1913] 1 Ch. 226; 82 L. J. (Ch.) 165; 20 Mans. 79; 107 L. T. 817

— Bonus dividend — Issue of new shares —  
Option to take new shares or retain dividend — Capital or income.

See WILL—Capital and Income.

*Meeting — Resolutions — Companies (Consolidation) Act, 1908* (8 *Edw.* 7, c. 69), s. 45.

By s. 45, sub-s. 1, of the Companies (Consolidation) Act, 1908, it is enacted that "a company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with, except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class."

A co. had presented a petition for the confirmation by the Court of a reduction of capital and a reorganization of capital in a way which affected the preference shareholders. The special resolution required by the earlier part of the section had been duly passed and confirmed, but the resolution required by the proviso had, at the first meeting of the preference shareholders, been passed by the holders of only 60,000 out of 90,000 preference shares, some of whom were represented by proxies.

Sargant J. expressed the opinion (1.) that a majority of three-fourths in value of the preference shareholders must be present or represented, as otherwise a bare majority of the class could interfere with the privileges of that class; (2.) that the resolution must be passed at a meeting; and (3.) that voting by proxy was allowable. The petition stood over in order that fresh meetings might be called. *In re FOUGAR & Co.* — Sargant J. [1913] W. N. 83; 29 T. L. R. 350

*Memorandum shares—Absence of contract as to issue as fully paid—Filing memorandum specifying consideration—Companies Act, 1867* (30 & 31 *Vict.* c. 131), s. 25—*Companies Act, 1898* (61 & 62 *Vict.* c. 26), s. 1—*Companies Act, 1900* (63 & 64 *Vict.* c. 48), s. 33—*Companies (Consolidation) Act, 1908* (8 *Edw.* 7, c. 69), s. 286.

A co. was incorporated on July 8, 1889, one of its objects being to take over an exist-

**COMPANY (Shares)—continued.**

ing business on the terms of an agreement (referred to in its memorandum and articles of association) with the owners of the business. The capital of the co. was 75,000*l.* in 3000 shares of 25*l.* each. Each of the seven signatories of the memorandum of association subscribed it for one of these shares. It was not then settled that memorandum shares were "issued" the moment the co. was incorporated. On Sept. 4, 1889, the agreement referred to in the memorandum and articles was executed by the owners and the co., and by this agreement the owners agreed to sell the business to the co. for 75,000*l.*, which was to be satisfied by the allotment to the vendors or their nominees of 3000 fully-paid shares of 25*l.* each in the co.'s capital, numbered 1 to 3000 inclusive, "of which shares the shares subscribed for by the subscribers to the memorandum of association of the company shall be deemed to form part, the said subscribers having been nominees of the vendors." This agreement was duly registered with the Registrar of Joint Stock Companies.

At the time when the agreement was filed, it was not noticed that the seven memorandum shares had already been actually issued and that the subscribers were liable to pay for the same in cash, and the shares were always supposed to be, and treated as, fully-paid shares, until, in Dec., 1912, it was discovered that they were not paid up at all.

The co. now applied, by originating motion, for an order under the Companies Act, 1898, for the filing with the Registrar of Joint Stock Companies of a memorandum in writing specifying the consideration for which the seven signatories' shares were issued, and that on such memorandum being filed it should, in relation to such shares, operate as if it were a sufficient contract in writing within the meaning of s. 25 of the Companies Act, 1867, and had been duly filed before the issue of such shares.

Swinfen Eady J. made the order asked for; approved the form of memorandum; and directed the memorandum to be filed with the Registrar of Joint Stock Companies within fourteen days. *In re WILKINSON SWORD Co., LD.* — Swinfen Eady J. [1913] W. N. 27; 29 T. L. R. 242; 57 S. J. 340

*Preference shares — Ordinary shares — Distribution of profits—Rights of shareholders inter se.*

Appeal from a decision of the C. A. reversing a decision of Joyce J. [1912] 2 Ch. 571; [1912] W. N. 191.

By articles 42 and 43 of its articles of association the respondent co. had power to issue new shares upon such terms, including preference, as the co. in general meeting might direct, and by article 45 it was provided that, subject to any priorities that might be given upon the issue of any new shares, the profits of the co. available for distribution should be distributed as dividend among the members in accordance with the amounts paid on the shares held by them respectively.

**COMPANY (Shares)—continued.**

The original capital of the co. consisted entirely of ordinary shares.

In 1891 the co. passed resolutions for the creation of 50,000 preference shares, the holders thereof to be entitled to cumulative preferential dividends at the rate of 10 per cent. on the amount for the time being paid up on such shares, which were to rank, both as regards capital and dividend, in priority to the other shares; and preference shares were issued in pursuance of those resolutions. All the shares in the co. were fully paid.

The appellant, a preference shareholder, brought an action against the co., claiming that the preference shares were entitled to rank for dividend *pari passu* with the ordinary shares, as against any profits of the co. available for distribution as dividend after providing for a cumulative dividend at 10 per cent. on preference shares and a dividend of 10 per cent. on the ordinary shares.

Joyce J. made a declaration to this effect, but his decision was reversed by C. A., who held that in the distribution of the profits the preference shares were not entitled to anything beyond a cumulative preferential dividend of 10 per cent.

The H. L. dismissed the appeal, holding that article 115, upon which the applicant relied, was subject to article 43, and that there was no room for the operation of the former article, unless the resolutions passed in pursuance of article 43 were silent as to the terms of the bargain. The resolutions for the creation of the preference shares contained the whole of the bargain, and fixed the amount of the dividend. *WILL v. UNITED LANKAT PLANTATIONS CO., LD.*

H. L. (E.) [1913] W. N. 294; 30 T. L. R. 37; 58 S. J. 29

—Sale—Warranty—Breach—Warranty or representation—Test of warranty.  
See WARRANTY.

*Reorganisation of share capital—Alteration of preferential rights—Modification of memorandum of association—Consolidation of classes of shares—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 45, 120.*

Appeal from a decision of Astbury J. [1913] W. N. 340.

The memorandum of the co. provided that its capital should consist of 950,000 $\frac{1}{2}$ l., divided into 300,000 preferred shares, 300,000 ordinary shares, and 350,000 deferred shares (all of 1 $\frac{1}{2}$ l. each), with such respective rights as were defined by the articles.

The articles gave a cumulative preferential dividend of 7 per cent. to each of the three classes of shareholders in succession and divided the surplus profits between the ordinary and deferred shareholders. The co. proposed a scheme of arrangement between the co. and its ordinary shareholders under s. 127 of the Companies (Consolidation) Act, 1908, whereby the co. should be authorized to issue 100,000 new ordinary 1 $\frac{1}{2}$ l. shares to rank equally with the existing ordinary shares, and that, as a consideration, a proportion of the new shares should be issued to the existing ordinary shareholders

**COMPANY (Shares)—continued.**

at par. A resolution approving the scheme was passed at a meeting of ordinary shareholders held under an order of the Court by a majority sufficient to satisfy s. 120 but not sufficient to satisfy s. 45 of the Act. A petition was presented by the co. for the confirmation of the scheme.

Astbury J. held that the proposed arrangement modified the conditions contained in the memorandum and would be an interference with the preferential rights of the ordinary shares by increasing their number, and also would amount to a consolidation of shares of different classes, within the meaning of s. 45 of the Act; he could not therefore approve the scheme under s. 120 alone.

The petition was ordered to stand over, without prejudice to the co.'s right to appeal, in order that s. 45 might be complied with.

The co. appealed.

The C. A. allowed the appeal, on the ground that the proposed scheme did not modify the memorandum or consolidate shares or affect preferential rights of shareholders within s. 45, therefore that section did not apply. Sect. 45 applied only to arrangements which had the effect specified in s. 45, sub-s. 1.

*In re Doeckham Gloves, Ltd.* [1913] 1 Ch. 226. overruled. *In re SCHWEPPE'S, LD. C. A.* [1913] W. N. 371

*Shares partly paid—Subdivision of shares—Varying proportion of unpaid capital on new shares—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 45.*

The Court confirmed, under s. 45 of the Companies (Consolidation) Act, 1908, special resolutions which modified the memorandum of association of a co. by dividing each partly-paid share into two, so that the entire liability for future calls should be thrown on one only of the two new shares so resulting. *In re VINE AND GENERAL RUBBER TRUST, LD.*

Neville J. 108 L. T. 709; 57 S. J. 610

*Surrender of shares—Exchange for new shares—No reduction of capital involved—Validity.*

A surrender of shares to a limited co. not involving any reduction of capital and not amounting to a purchase of its own shares by the co. is not necessarily *ultra vires*.

In 1896, pursuant to articles of association and special resolution, the holders of 6 per cent. fully-paid preference shares surrendered the same to the co. in exchange for fully-paid 5 per cent. preference shares, and a contract in writing was duly filed with the Registrar of Joint Stock Companies, pursuant to s. 25 of the Companies Act, 1867. The surrendered shares were not cancelled, but were subject to be reissued by the co.:—

Held, that the surrender not involving any reduction of capital was valid; that the transaction did not amount to a purchase by the co. of its own shares; and that the new shares issued in exchange were fully paid up.

*Teasdale's Case* (1873) L. R. 9 Ch. 54, and *Etchbham v. City of Chicago Grain Elevators* [1891] 3 Ch. 459, followed.

Dicta of Stirling L.J. and Cozens-Hardy

**COMPANY (Shares)—continued.**

*L. J.* in *Bellerby v. Rowland & Marwood's Steamship Co.* [1902] 2 Ch. 14, discussed and distinguished. *Rowell v. John Rowell & Sons, Ltd.* - *Warrington J.* [1912] 2 Ch. 609; 81 L. J. (Ch.) 759; 19 Mans. 371; [1912] W. N. 194; 56 S. J. 704

— Tenant for life and remainderman—Preference shares — Death of tenant for life—Future dividends.  
See SETTLED LAND.

— Tenant for life and remainderman—Shares in company — Reserve fund — Bonus dividend — New shares — Option — Capital or income.  
See WILL—Capital and Income.

**Stannaries.**

See STANNARIES.

**Tramway Company.**

See TRAMWAY.

**Transfer of Business.**

*Insurance—Insurance company—Petition to sanction transfer of whole business of company A. to company B.—Transmission to policy-holders of company B. of a statement of nature of transfer. abstract of facts contained in provisional agreement, and copies of report — Circumstances in which transmission to policy-holders dispensed with—Assurance Companies Act, 1909 (9 Educ. T. c. 49), s. 13.*

CITY OF GLASGOW LIFE ASSURANCE CO. AND SCOTTISH UNION AND NATIONAL INSURANCE CO., IN RE - Ct. Sess. [1913] W. C. & Ins. R. 475

**Underwriting.**

*Underwriting letter—Variation in prospectus — Alteration of risk—Discharge of underwriters.*  
Trial of action before Pickford J. without a jury.

The Warner Engineering Co., Ltd., hereinafter called the vendor co., were promoting the plt. co., which was then designed and was subsequently formed to acquire certain rights and business of the vendor co. A draft prospectus was prepared which contained the following statement: "The minimum subscription on which the directors may proceed to allotment is 15,000*l.*, which has been underwritten at a commission of 5 per cent. thereon and an overriding commission of 2½ per cent. payable by the company." It also stated that the plt. co. would acquire all the patent rights and the benefit of all working agreements and licences, and the goodwill and assets of the traction department of the vendor co. for the price of 35,000*l.*, payable as to 9000*l.* in cash and 26,000*l.* in fully-paid ordinary shares of 1*l.* each.

The defts. in July, 1910, signed an underwriting letter in which they agreed to apply for 500 *l.* ordinary shares. The underwriting letter contained a clause that the defts.' obligation hereunder was to hold good, notwithstanding any variation between the draft prospectus submitted to them and the prospectus as finally settled and published.

**COMPANY (Underwriting)—continued.**

The action was brought to recover calls upon the 500 shares taken up by the defts. under this allotment letter.

After the date of the underwriting letter the clause in the draft prospectus relating to the directors proceeding to allotment was altered. The altered clause was in these terms: "The minimum subscription on which the directors may proceed to allotment is fixed by the articles of association at the nominal sum of 100*l.*, as 5000 shares of this issue have been underwritten at a commission of five per cent. and an overriding commission of two and a half per cent. payable by the company. The directors will proceed to allotment on the closing of the lists."

The altered prospectus also stated that if the issue of shares was not fully subscribed, the 9000*l.* cash, part of the purchase-money, might be paid as follows: within seven days after each allotment of shares for cash the plt. co. was to pay one-sixth of the amount of the nominal value of the shares so allotted, until the 9000*l.* had been fully paid, and any balance remaining unpaid after seven days from the date of the first general allotment was to bear interest at 5 per cent. per quarter.

The defts. contended that these were more serious variations than any contemplated by the allotment letter; that their risk was materially altered thereby, and that, as the variations had been made without their assent, they were discharged from their obligation under the letter.

Pickford J. held that the words in the allotment letter permitting variations in the draft prospectus were wide enough to cover the variations to which the defts. took objection. He held therefore that the defts. were not discharged, and gave judgment for the plt. *WARNER INTERNATIONAL AND OVERSEAS ENGINEERING CO., LD. v. KILBURN, BROWN & CO.* - Pickford J. [1913] W. N. 76; 29 T. L. R. 322

**Will.**

— Bequest of shares or of money to buy shares in private company—Dividend, whether apportionable—"Public company."  
See APPORTIONMENT.

**COMPANY—WINDING-UP.**

*Assets—Distribution, col. 95.*

*Compulsory Winding-up, col. 96.*

*Contributories, List of, col. 96.*

*Costs. See below, Liquidator.*

*Liquidator, col. 98.*

*Preferential Claims, col. 99.*

*Priorities. See above, Preferential Claims.*

*Proof, col. 100.*

*Reconstruction, col. 102.*

*Rescission of Contract, col. 102.*

*Sale, col. 103.*

*Stannaries. See STANNARIES.*

**COMPANY—WINDING-UP**<sup>2</sup>*—continued.**Transfer of Action, col. 103.**Unregistered Company, col. 104.**Unregistered Friendly Society, col. 105.**Voluntary Winding-up. See above,  
Compulsory Winding-up.***Assets—Distribution.**

*Preference shares with paid preferential dividend—Right to take further dividend—Winding-up—Surplus assets—Rights of shareholders—Companies (Consolidation) Act, 1908, s. 186, sub-s. 1.*

This was a summons taken out by the liquidator in a voluntary winding-up of the co. asking for the determination of certain questions as to how the holders of the first, second, and third preference shares and of the preferred and deferred stock were to participate in a sum of about 200,000*l.* surplus assets of the co. remaining after repaying to all the holders of shares and stock the amounts paid up on the shares and stock held by them.

It appeared that the sum of 200,000*l.* which remained for distribution was left after taking into account a sum of over 300,000*l.* which represented interest paid by the Postmaster-General on the purchase-money for the undertaking of the co.

The co. was incorporated in 1881 with a nominal capital of 600,000*l.* divided into preference and ordinary shares.

In 1889 the co. bought up the undertakings of some other telephone companies, and special resolutions were passed substituting a new set of articles for the original articles. The purchase required the creation of new share capital, and on this and other occasions the capital was increased.

The co.'s business came to an end on Dec. 31, 1911, and in Jan., 1912, the special resolution for voluntary winding-up was confirmed. There were then five classes of shareholders and stockholders: first preference shareholders, 150,000*l.*; second preference shareholders, 150,000*l.*; third preference shareholders, 1,250,000*l.*; preferred stockholders, 2,225,000*l.*; deferred stockholders, 3,725,000*l.*

The first preference shareholders claimed that they were entitled to share ratably with the other classes in the surplus assets. The second preference shareholders disputed this, but claimed to be entitled to participate. The third preference shareholders disputed both the former claims. The preferred stockholders claimed interest on their shares during the interval between winding-up and the final award. The deferred stockholders disputed all the claims and claimed the whole of the surplus assets:—

*Held*, upon the true construction of the old and new articles and the resolutions on the creation and issuing of the shares, the first, second, and third preference shareholders were not entitled to any return except of the capital paid up on their respective shares; that the deferred stockholders were entitled to the whole fund; and that the preferred stockholders were not entitled to interest.

**COMPANY—WINDING-UP (Assets—Distribution)***—continued.*

*Held*, further, that where preference shares are given with a paid preferential dividend at a specified rate, the right to take any further dividend was in effect negatived.

*In re Bridgwater Navigation Co.* [1891] 1 Ch. 155, distinguished. *In re NATIONAL TELEPHONE CO., LD.* Sargant J. 109 L. T. 399; 29 T. L. R. 682; 58 S.T. 12

**Compulsory Winding-up.**

*Voluntary winding-up—Order for compulsory winding-up.*

The Court made an order for the compulsory winding-up of a co. where by reason of the way in which the business had been carried on and the position of the vendor (who had been appointed liquidator in the voluntary winding-up) the fullest investigation was necessary by a liquidator other than the vendor. *In re THE PERUVIAN AMAZON CO., LD.*

Swinfen Eady J. 29 T. L. R. 384

**Contributories, List of.**

*Defaulting Irish contributories of company wound up by English Court—Enforcement of English order giving official liquidator leave to make a call—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 180, sub-s. 1—Practice.*

A co., registered in England, was being wound up by the English Court, and an order had been made giving the official receiver and liquidator leave to make a call upon the contributories of the co. Certain Irish contributories had failed to pay the amount of the call.

On an ex parte application, leave was given to the official receiver and liquidator to enforce the order of the English Court by issuing and serving on the defaulting Irish contributories an originating summons requiring them to pay the amounts in which they were respectively in default. *In re BANK OF EGYPT, LD.*

Barton J. (Tr.) [1913] 1 I. R. 502

*Insurance company—Company limited by guarantee and not having a capital divided into shares—Winding-up—Articles of association—Construction—"Members"—Directors "ex officio members"—Whether liable as contributories—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 9, sub-s. 4; ss. 14, 71; Sched. II., Form B—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 10, 118; Sched. III., Form B—Companies (Winding-up) Rules, 1909, r. 80.*

The memorandum of an insurance co. limited by guarantee and not having a capital divided into shares followed sub-s. 4 of s. 9 of the Companies Act, 1862, and limited the liability of its members to 5*l.* per policy. Its articles provided that the co. should consist of the several persons who for the time being should have insured or should have agreed to insure in the co.; that every person who insured with the co. should as from the date of such insurance be deemed to have been a member of the co., and every such person should be deemed to have ceased to be a member so soon as he should be no longer insured in the co.; that each member for the

**COMPANY—WINDING-UP** (Contributories, List of)—*continued.*

time being of the directors should "ex officio be a member of the company"; that the first directors should be the subscribers of the memorandum, but that directors should not "necessarily be members other than ex officio members." Then followed usual provisions for the election of directors at annual general meetings of the co., one third of the directorate for the time being retiring in rotation every year, but being eligible for re-election.

Four of the original directors were signatories to the memorandum, and from time to time at annual general meetings of the co. retired in rotation from the directorate and were re-elected, and were directors when the co. went into liquidation. Their names never were on the register of members and they never insured with the co., but they represented limited cos. whose names were on the register and who insured with the co. The liquidator placed on the list of contributories the four directors in their character of directors, and also the cos. they represented, as members liable to contribute to the assets of the co. :—

*Held*, that the four directors were not liable as such to contribute as members to the assets of the co. and were therefore entitled to have their names removed from the list.

When a person, whose name has been placed on the list of contributories in a particular character, successfully applies to have his name removed from the list in that character, it is not open to the liquidator on the same application to contend that he is entitled to retain the name of the applicant on the list in another character. *In re PREMIER UNDERWRITING ASSOCIATION, LD.* (No. 2). *CORY'S CASE* - *Neville J.* [1913] 2 Ch. 81; 82 L. J. (Ch.) 378; 20 Mans. 183; 108 L. T. 826; [1913] W. N. 150; 57 S. J. 594

*Insurance company—Company limited by guarantee and not having its capital divided into shares—Winding-up—Past and present members—List of contributories—Companies Act, 1862* (25 & 26 Vict. c. 89), s. 9, sub-s. 4; s. 38—*Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 123.

Sect. 38 of the Companies Act, 1862, which is reproduced in s. 123 of the Companies (Consolidation) Act, 1908, applies to all cos. formed under the Act. Therefore the past members of a co. limited by guarantee, as well as the past members of a co. limited by shares, who have ceased to be members within a year before the commencement of the winding up of the co., are not liable to contribute to the assets of the co., unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act. *In re PREMIER UNDERWRITING ASSOCIATION, LD.* (No. 1).

*Neville J.* [1913] 2 Ch. 29; 82 L. J. (Ch.) 383; 20 Mans. 189; 108 L. T. 824; [1913] W. N. 150

**COMPANY—WINDING-UP**—*continued.***Costs.**

*See below, Liquidator.*

**Liquidator.**

*Scheme of arrangement—Guarantee policy—Policy to guarantee mortgage debt—Contract to pay principal and interest on default of mortgagor—Mortgagee's costs added to principal—Costs of valuing security and proving for balance—Rules of Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69).

A mortgagee held some land as security for 6000*l.* which was also secured by a guarantee policy with a society, the premiums of which the mortgagor agreed to pay. In clause 2 of the policy the society contracted to pay, in case of default by the mortgagor, "the principal and interest due under the mortgage." The policy also provided that the mortgagee should in certain circumstances accept "the amount due for principal, interest, and costs," and also that the mortgagee should not sell the property charged for less than "the amount owing in respect of principal, interest, and costs."

The mortgagor died and the mortgagee went into possession.

The society went into liquidation, and a scheme of arrangement was sanctioned placing the secured creditors in a position similar to secured creditors under the Bankruptcy Act.

The mortgagee was called upon to value her security, which she did, and assessed it at 3000*l.* and proved for the balance. The mortgagee's bill of costs was then submitted to the liquidator. The bill of costs was formed of three classes, 1 and 2 relating to meetings of creditors of the society, and class 3 relating to the costs of the valuation of the security and the proof for the balance.

The taxing Master disallowed classes 1 and 2, but allowed class 3 on the ground that they were mortgagee's costs and should be added to the principal.

Summonses were taken out by the liquidator and the mortgagee to review this taxation :—

*Held*, that by clause 2 of the policy only the principal and interest were covenanted to be paid and this did not include costs; that the co.'s winding-up rules applied, and under those rules creditors were not allowed their costs of proving their claim, and consequently all the costs ought to be disallowed. *In re LAW GUARANTEE TRUST AND ACCIDENT SOCIETY, LD.* - *Neville J.* 108 L. T. 830; 57 S. J. 628

*Voluntary liquidation—Unsuccessful litigation—Costs—Priorities—Companies (Consolidation) Act, 1908* (8 Edw. 7, c. 69), s. 193.

Costs of unsuccessful litigation incurred by a liquidator, whether in a voluntary or compulsory winding-up, are payable to the party entitled out of the assets of the co. in priority to the costs of the liquidation. This rule applies, whether the order simply directs payment of costs, or directs that the costs be

**COMPANY — WINDING-UP (Liquidator) —**  
*continued.*

paid out of the assets of the co., or that the liquidator do pay the costs with liberty to recoup himself out of the assets. *In re* PACIFIC COAST SYNDICATE, LD. - Neville J. [1913] 2 Ch. 26; 82 L. J. 404; 108 L. T. 823; [1913] W. N. 137; 57 S. J. 518

*Voluntary winding-up — Failure to pay creditor — Dissolution of company — Costs of action against company thrown away — Liability of liquidator — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 186.*

The plts. sued a limited co. called Coxeter & Sons, LD., for the price of goods sold and delivered. During the progress of that action Coxeter & Sons, LD., went into voluntary liquidation, the present debts. being appointed liquidators, and, later, that co. was dissolved. The plts. were not aware of the liquidation and dissolution till a later date, and when they became aware thereof, they sued the debts. to recover from them as damages the price of the goods which had been supplied to the co., the plts. alleging that the debts. as liquidators had committed a breach of their statutory duty in allowing the co. to be dissolved before the co.'s debts had been paid. The plts. also claimed to recover from the debts. the amount of the costs that had been thrown away in the action against Coxeter & Sons, LD., that action having abated on the dissolution of the co. —

*Held*, (1.) that the debts. had committed a breach of their statutory duty in allowing the co. to be dissolved before its debts had been paid and that they were liable in damages to the plts. in respect of the claim for goods sold to the co.; but (2.) that the debts. were not in the circumstances liable for the costs thrown away in the action against Coxeter & Sons, LD., as the incurring of those costs was not the natural consequence of the debts.' breach of statutory duty. ARGYLLS, LD. v. COXETER AND ANOTHER

Pickford J. 29 T. L. R. 355

**Preferential Claims.**

*Director — "Servants" — Articles of association — Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 209, sub-s. 1 (b).*

The articles of a co. that published a weekly periodical provided that no director should be disqualified by his office from contracting with or being employed by the co. in the capacity of contributor, editor, or otherwise; and that a director might hold any other office or place under the co. in conjunction with his office of director.

R. was a director of the co. and was also appointed "dress editress" of the periodical at a fixed salary per annum, and her duties occupied practically the whole of her time. H. was employed by the co. at a fixed salary per annum to supply "fashion drawings" for the periodical, and the co. had the first call on her services and her work occupied most of her time, but occasionally she did work for other publishers. P. was em-

**COMPANY — WINDING-UP (Preferential Claims)**  
*—continued.*

ployed by the co. at a fixed salary per annum to supply weekly articles and other information for the periodical, but she also wrote for other publishers. R., H., and P. claimed to be preferential creditors of the co. for arrears of salary due to them respectively at the commencement of the winding-up:—

*Held*, having regard to the articles of the co., that R.'s office of director did not preclude her employment in any other capacity; that she was a "clerk or servant" of the co. within the meaning of sub-s. 1 (b) of s. 209 of the Companies (Consolidation) Act, 1908, and was therefore entitled to preferential payment:—

But *held* that H. and P. were merely contributors to the periodical and not "clerks or servants" of the co. within the meaning of the section, and were therefore not entitled to preferential payment. *In re* BEETON & Co., LD. - Neville J. [1913] 2 Ch. 279; 82 L. J. (Ch.) 464; 108 L. T. 918; [1913] W. N. 200; 57 S. J. 62

**Priorities.**

*See above, Preferential Claims.*

**Proof.**

*Claim against firm of promoters for secret profit — Liability of partners — Joint and several liability — Distinct contracts — Right of double proof — Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), Sched. II, r. 18.*

The firm of L. & Co., in which G. and D. were the sole partners, were promoters of a co. and sold to the co. a business belonging to G. and D. at a large secret profit. The co. went into compulsory liquidation. Both G. and D. were bankrupt. G. had no assets, but the liquidator proved against D.'s estate for a large sum as damages for breach of trust and received a dividend of 3s. in the pound, amounting to 2109l. Out of this money and other assets he was prepared to return to the preference shareholders a portion of their capital. Two preference shareholders were mere nominees of L. & Co. The liquidator claimed to retain the dividends payable to these nominees and set them off against the amount due from L. & Co. in respect of their secret profit:—

*Held*, that there were no distinct contracts between the firm of L. & Co. and the partners in that firm with the co., and that consequently r. 18 of Sched. II. to the Bankruptcy Act, 1883, did not apply; there was no right of double proof, and the liquidator, having elected to prove against the estate of one of the partners, had no right to prove against the joint estate of the firm of L. & Co., and there could be no set-off. *In re* KENT COUNTY GAS LIGHT AND COKE CO., LD.

Neville J. [1913] 1 Ch. 92; 82 L. J. (Ch.) 23; 19 Mans. 356; 107 L. T. 641; 57 S. J. 112

— Contract for goods to be manufactured — Measure of damages — Voluntary winding-up.

*See* SALE OF GOODS.

**COMPANY—WINDING-UP (Proof)—continued.**

*Insurance company—Current policies—Employers' liability policies—Contingent liabilities—Contingent claims maturing after winding-up order—Proofs—“Valuing a policy”—Breach of contract—Measure of damages—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 206, 207, 208—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), ss. 1, 17; Sched. VI.*

A policyholder who is insured against risks under the Employers' Liability Act, 1880, and the Workmen's Compensation Acts, 1897 to 1908, may prove in the liquidation of the insurance co. (1.) for ascertained amounts due at the date of the winding-up order from the co. to the assured under the policy; (2.) for liabilities in the shape of weekly payments which had emerged before the date of the winding-up order, such weekly payments to be valued according to the rule prescribed by Sched. VI. (D) to the Assurance Companies Act, 1909; and (3.) for the value of the policy as a contract of indemnity in respect of the risk of fresh liabilities emerging after the date of the winding-up and during the unexpired period of the policy, such valuation to take place as at the date of the winding-up order, not on the basis of an estimate of the contingencies, but upon the basis of a partial return of premium. He is not entitled to prove in addition in respect of liabilities which may have emerged under the policy between the date of the winding-up order and the date of proving.

So held by Cozens-Hardy M.R. and Kennedy L.J. (Buckley L.J. dissenting). Decision of Neville J. reversed.

Held by Neville J. (whose decision on this point was not appealed from), that the policy-holder in such a case is not entitled to prove by way of damages for the difference between the estimated cost of reinsuring the same risks for the same period in another office and the amount of premiums he would have paid under his policy.

The principle of *Macfarlane's Claim* (1880) 17 Ch. D. 337, not adopted.

The opinion of the Lord Ordinary (Lord Cullen) in the Ct. of Sess. in Scotland in *In re Life and Health Assurance Association, Ltd., Berry's Claim* [1913] 2 Ch. 137, n., approved. *In re LAW CAR AND GENERAL INSURANCE CORPORATION. J. J. KING & SONS', LD., CASE. OLD SILKSTONE COLLIERIES', LD., CASE. C. A. [1913] 2 Ch. 103; 82 L. J. (Ch.) 467; 20 Mans. 44; 108 L. T. 862; [1913] W. N. 157; 29 T. L. R. 532; 57 S. J. 556*

*Pensions—Proofs—Voluntary allowance—Ultra vires.*

A building society, in addition to the usual business of a building society, carried on banking and other businesses. All these businesses were housed in one building and were managed by the same board of directors and were served by the same staff. The society was ordered to be wound up in 1911, and the banking business was held to be ultra vires the society.

In 1903 A., a correspondence clerk of the society, retired at the request of the board

**COMPANY—WINDING-UP (Proof)—continued.**

and was promised a pension; and in 1906 B., a clerk in the banking business, retired at the request of the board and was promised a pension. Both pensions were duly paid until the winding-up order, and A. and B. claimed to prove in the winding-up for the capital value of their respective pensions:—

Held, that A.'s pension was merely a voluntary allowance not founded on any contract, and therefore his claim failed.

Held, also, that B., apart from any question of contract, being employed in the banking business which was ultra vires, could not prove against the assets of the society. *In re BIRKBECK PERMANENT BENEFIT BUILDING SOCIETY*

Neville J. [1913] 1 Ch. 400; 82 L. J. (Ch.) 232; 20 Mans. 159; 108 L. T. 211; [1913] W. N. 57; 29 T. L. R. 256

**Reconstruction.**

*Compromise or arrangement—Sale—Dissentient shareholders—Power to bind—Petition—Sanction of the Court—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 120, 192.*

A co. proposed to sell its assets and undertaking to a new co. to be formed for that purpose and to compel shareholders to accept shares in the new co. instead of their shares in the old co. The creditors were to be taken over by the new co. There was no provision for preserving the rights of dissentient shareholders. On a petition for the sanction of the Court:—

Held (reversing the decision of Neville J.), that the scheme was not a compromise or arrangement which could be sanctioned under s. 120 of the Companies (Consolidation) Act, 1908. *In re GENERAL MOTOR CAR CO., LD.*

C. A. [1913] 1 Ch. 377

*Voluntary winding-up—Notice of dissent—Form of notice—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 192, sub-s. 3.*

A notice under s. 192, sub-s. 3, of the Companies (Consolidation) Act, 1908, dissenting from a resolution for reconstruction, must not only contain a declaration of dissent, but must also expressly give the liquidator the option, either to abstain from carrying the resolution into effect, or to purchase the dissentient member's interest.

Dictum of Jessel M.R. in *In re Union Bank of Kingston-upon-Hull* (1880) 13 Ch. D. 808, 810, followed. *In re DEMERARA RUBBER CO., LD.* Swinfen Eady J. [1913] 1 Ch. 331;

82 L. J. (Ch.) 220; 20 Mans. 148; 108 L. T. 318; [1913] W. N. 56

**Rescission of Contract.**

*Voluntary winding-up—Summons in winding-up to rescind contract—Jurisdiction—Discretion of Court—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 193, 215.*

A co. was formed for the purpose of entering into, and had executed, an agreement for the purchase of certain options. The articles of association provided that it should be no objection to the agreement that the vendors were promoters and directors and stood in a fiduciary relation to the co. The options depended on an agreement between the vendors and the French



**COMPANY—WINDING-UP (Rescission of Contract)—continued.**

owners of a business; this agreement was disputed, and ultimately declared void by a French court. The co. then went into voluntary liquidation, and the liquidators took out this summons to set aside the agreement between the co. and the vendors:—

*Held*, that it was doubtful whether the Court had jurisdiction on a summons under s. 193 to set aside a contract, but if it had such jurisdiction, it was discretionary and ought not to be exercised in this case; and no proceedings could be taken against the directors for misfeasance under s. 215 until the agreement, which was valid according to the constitution of the co., had been set aside. *In re CENTRIFUGAL BUTTER CO., LD.*

Neville J. [1913] 1 Ch. 188; 82 L. J. (Ch.) 87;  
20 Mans. 34; 108 L. T. 24; [1912] W. N.  
291; 57 S. J. 211

**Sale.**

*Receiver in debenture-holders' action—Conditional contract for sale of company's undertaking entered into by receiver—Petition by liquidator to sanction scheme of arrangement—Summons by receiver to approve conditional contract of sale—One order on the two applications.*

Where a co. is in liquidation, and a receiver has also been appointed in a debenture-holders' action, and where there is before the Court both a petition by the liquidator to sanction a scheme of arrangement, and also a summons by the receiver to approve a conditional contract of sale:—

*Held*, that one order can be made on the two applications. *In re DURHAM COLLIERIES ELECTRIC POWER CO., LD. POOLE v. THE CO.*  
Neville J. 57 S. J. 558

**Stannaries.**

See STANNARIES.

**Transfer of Action.**

*Pending action in King's Bench Division—The company and other parties defendants—Fraud alleged—Transfer to winding-up Court—Practice—Companies (Winding-up) Rules, 1909, rr. 2, 42—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 142.*

Rule 42 of the Companies (Winding-up) Rules, 1909, which empowers the judge of the winding-up Court to transfer to that Court any action by or against a co. which, at the date of the winding-up, is pending in any other Court, extends to actions in which other parties as well as the co. are debtors.

So *held* by the C. A., affirming the decision of Neville J.

Where, therefore, at the date of the liquidation an action was pending in the King's Bench Division against the co., its directors and promoters, to set aside an agreement on the ground of misrepresentation and fraud, and the plts. in the action obtained leave under s. 142 of the Companies (Consolidation) Act, 1908, to continue the action against the co., and subsequently after close of pleadings set it down for trial with a jury, the judge of the winding-up Court in the exercise of his discretion under r. 42, and on the

**COMPANY—WINDING-UP (Transfer of Action)—continued.**

application of the liquidator and with the consent of the debt. directors and promoters, transferred the action to that Court notwithstanding the opposition of the plts., and the C. A. refused to interfere with the exercise of his discretion. *In re PACAYA RUBBER AND PRODUCE CO., LD.*

C. A. [1913] 1 Ch. 218; 82 L. J. (Ch.) 124;  
20 Mans. 37; 108 L. T. 21; [1912] W. N.  
285; 29 T. L. R. 129; 57 S. J. 143

**Unregistered Company.**

*Association constituted by deed—Contributory—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 124, 137, 169.*

This association was constituted by a deed with a schedule of rules attached. Its object was the purchase by the association of an estate, the sub-division of that estate into allotments shewn on a plan drawn on the constitution deed, and the division of such allotments among the members according to the rules. The allotments were put up to auction at a price fixed by the rules, to be paid with interest by monthly instalments, which were also fixed by the rules for each allotment. The person bidding the highest premium for each allotment became its purchaser and a member of the society.

The rules provided for the appointment of trustees, a secretary and committee, who managed the society and were empowered to apportion incidental expenses, such as making up roads, amongst the allotments. The allotments were to be conveyed to the members when their payments were completed. The rules did not contemplate the making of any profits by the association or the division of profits between the members.

The estate was purchased and conveyed to the trustees in 1892. It was divided into 303 allotments, of which all but seven had, long before the date of the petition, been allotted to members, of whom all but one had paid all their instalments, and had their allotments conveyed to them. No purchasers could be found for the seven unallotted allotments. Annual balance-sheets had been regularly made out up to 1905, and the last shewed a balance in hand of about 500l.

This petition for a winding-up was presented by three of the members who had paid all their instalments and had their allotments conveyed to them. It was supported by other persons in the same position.

It was opposed by the surviving trustee and the secretary.

Neville J. said he had no doubt that he had jurisdiction to make the order. His only difficulty had been to see how the petitioners could be brought within the definition of contributories in s. 124 of the Companies (Consolidation) Act, 1908. But it had been decided in *In re Anglesea Colliery Co.* (1866) L. R. 1 Ch. 555, that holders of fully-paid shares were contributories, and the members who had paid their instalments and got their conveyances were in the same position. He could not, without an express declaration in

**COMPANY—WINDING-UP (Unregistered Company)—continued.**

the rules, infer that the association was intended to be a sort of tontine arrangement in which those who paid their instalments last took all the assets. It was just and equitable that the association should be wound up, and he made the usual order. *In re OSMOND-THEATRE HALL FREEHOLD GARDEN AND BUILDING ALLOTMENT SOCIETY* - Neville J. [1913] W. N. 243; 58 S. J. 13

• • **Unregistered Friendly Society.**

*Unregistered company—Friendly society not registered under the Friendly Societies Acts—Jurisdiction—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 267, 268.*

The Court has jurisdiction to wind up under the Companies Acts as an unregistered co. a friendly society which has not been registered under the Friendly Societies Acts or any other Acts.

The winding-up order will be made, if a large majority of members desire it, notwithstanding that an action is pending in which the society could be wound up. *In re VICTORIA SOCIETY, KNOTTINGLEY* - Neville J. [1913] 1 Ch. 167; 82 L. J. (Ch.) 176; 20 Mans. 76; 107 L. T. 755; [1912] W. N. 278; 29 T. L. R. 94; 57 S. J. 129

**Voluntary Winding-up.**

*See above, Compulsory Winding-up and Liquidator*

**COMPENSATION**—Building in street—Payment or tender—Refusal to set back—Mandatory injunction to pull down.  
*See STREETS.*

— Licensing Acts.

*See LICENSING ACTS.*

— Local government.

*See LOCAL GOVERNMENT.*

— Settled land — Improvements — Conversion into building estate — Agricultural improvements—Capital money.  
*See SETTLED LAND—Improvements.*

— Tramway company—Abandonment—Deposit — Landowner—Statutory obligation.  
*See TRAMWAYS.*

— Waterworks—Breaking up streets—Cost of repair—Jurisdiction of justices.  
*See LOCAL GOVERNMENT—Streets.*

— Workmen's compensation.

*See WORKMEN'S COMPENSATION.*

**COMPETENCY**—Railway and Canal Commission — Appeal—Reference relating to telephones—Telegraph (Arbitration) Act, 1909.

*See APPEAL.*

**COMPOUND SETTLEMENT.**

*See SETTLED LAND—Trustees.*

**COMPROMISE**—Action—Compromise varying rights—Consent order—Staying all further proceedings—No liberty to apply—Enforcement by summons in action or by independent proceedings.

Appeal from a decision of Sargant J., 108

**COMPROMISE—continued.**

L. T. 452; [1913] W. N. 81, dismissed with costs. *In re HEARN. BERTODANO v. HEARN* C. A. 108 L. T. 737; [1913] W. N. 103; 57 S. J. 443

— Company—Reconstruction—Compromise or arrangement.

*See COMPANY—WINDING-UP—Reconstruction.*

**COMPTROLLER-GENERAL**—Appeal from—Trade mark—Application for registration—Grounds of objection.  
*See TRADE MARK—Registration.*

**COMPULSION**—Payment under compulsion of law—Legal process in a foreign country—Action for recovery of money.  
*See MONEY HAD AND RECEIVED.*

**CONDITION**—Policy—Insurance of mortgage owned by a company—Insured company in liquidation—Power of liquidator to assign.

*See INSURANCE (MORTGAGE).*

— Railway—Carriage of goods—Condition in consignment note—Construction of condition.

*See RAILWAY.*

**CONFECTIONERY**—Shop—Weekly half-holiday—Exempted trade—Butter—Run honey.

*See SHOPS.*

**CONFLICT OF LAWS**—Administration—Succession to property—Movables—Foreign subject—English document—Construction—Jurisdiction.

*In re BONNEFOI. SURREY v. PERRIN*

C. A. [1912] P. 233; 82 L. J. (P.) 17; 107 L. T. 512

**CONSECRATION**—Chapel—Infirmary.

*See CHARITY—Hospital Chapel.*

**CONSIDERATION**—Corporation—Contract not under seal—Executed consideration—Contract to pay implied from acceptance of benefit—Improvement commissioners.  
*See LOCAL GOVERNMENT—Urban District Council.*

— Failure.

*See PATENT—Licence.*

**CONSIGNMENT NOTE**—Condition in—Railway—Carriage of goods.  
*See RAILWAY.*

**CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.**

*See CRIMINAL LAW—Indictment and JUSTICES—Criminal Law—Information.*

**CONTEMPT OF COURT**—Criminal cause or matter.

*See DIVORCE.*

*Disobedience of order of Court—Absence of personal service—Disobedient person going out of jurisdiction—Writ of sequestration—R. S. C., Order XLII, r. 6.*

Where a person, against whom an order had been made in the K. B. D. ordering

**CONTEMPT OF COURT**—*continued.*

him to do a particular act, disobeyed the order with full knowledge of its having been made and went out of the jurisdiction before it had been formally served upon him, the Court, on an application for the issue of a writ of sequestration to enforce the order, dispensed with personal service of the order disobeyed and directed the writ to issue.

Practice of the Probate and Divorce Division that respect followed. *REX v. WIGAND*

Div. Ct. [1913] 2 K. B. 419; 82 L. J. (K. B.) 735; 109 L. T. 111; [1913] W. N. 154; 29 T. L. R. 509

*Newspaper*—*Pending action*—*Private proceedings*—*Publication.*

The publication together of two items of news, the first relating to private proceedings in a pending action in connection with a share transaction, and the second giving a report of criminal proceedings (not yet finished) relating to the same transaction, *held* to tend to prejudice the jury trying the criminal case.

*Semble, per Scrutton J.*, a newspaper ought not, before a case comes on for trial, to publish in full the private proceedings, such as the statement of claim or an affidavit charging fraud or a writ containing similar charges. *REX v. ASTOR AND OTHERS, Ex parte ISAACS. REX v. MADGE AND ANOTHER, Ex parte THE SAME* - - - Div. Ct. [1913] 30 T. L. R. 10

*Ward of Court*—*Removal out of the jurisdiction*—*Committal.*

It is no answer to a motion for committal to prison for contempt of Court in removing a ward of Court out of the jurisdiction to say that the act was done on the solicitation of the ward and that, although there was knowledge that the girl was a ward of Court, there was not full knowledge of the meaning of that status.

The absence of knowledge that the girl was a ward of Court did not altogether exonerate the ignorant parties, but constituted an alleviation of their contempt. *In re J. (AN INFANT).*

Sargant J. 108 L. T. 554; 29 T. L. R. 456; 57 S. J. 500

**CONTINGENT CLASS**—Will—Appointment—

Excessive exercise—Objects—Non-objects—Ascertainment at future period.

See WILL.

**CONTINGENT LIABILITIES**—Insurance com-

pany—Winding-up—Current policies—Employers' liability policies—Contingent claims maturing after winding-up order—Proofs—Breach of contract—Measure of damages.

See COMPANY—WINDING-UP—Proof.

**CONTRACT.**

*Breach, col. 108.*

*Building Contract, col. 109.*

*Company. See COMPANY.*

*Consideration. See PATENT.*

*Corporation. See LOCAL GOVERNMENT.*

**CONTRACT**—*continued.*

*Docks. See DOCKS.*

*Duration, col. 109.*

*Fraud. See FRAUD.*

*Frauds, Statute of. See FRAUDS, STATUTE OF.*

*Husband and Wife. See HUSBAND AND WIFE.*

*Illegality, col. 109.*

*Implied Term, col. 110.*

*Indemnity. See INDEMNITY.*

*Infant. See INFANT.*

*Insurance. See COMPANY—WINDING-UP.*

*Marriage. See above Duration, and HUSBAND AND WIFE.*

*Public Policy. See HUSBAND AND WIFE.*

*Railway. See RAILWAY.*

*Rescission. See COMPANY—WINDING-UP.*

*Restraint of Trade. See RESTRAINT OF TRADE.*

*Sale of Goods. See SALE OF GOODS.*

*Sale of Land. See FRAUDS, STATUTE OF.*

*Service, col. 111.*

*Specific Performance, col. 112.*

*Termination, col. 112.*

*Time. See TIME.*

*Tithe Rent-Charge. See TITHE RENT-CHARGE.*

**Breach.**

— Breach of contract, Action founded on—Foreclosure summons—Service out of the jurisdiction—Practice. See SERVICE.

*Engagement of operatic singer—Singer not allowed to perform—Damages.*

The plt., an operatic singer, was engaged by the deft. to sing at four performances in London for a certain sum, half to be paid in advance. This sum in advance was duly paid to the plt. At the final rehearsal the deft. was not satisfied with the plt.'s performance and refused to allow him to appear, and for this the plt. claimed damages. The county court judge held that the plt. was entitled to treat the contract as determined and to claim the unpaid half of the contract sum, and further that he was entitled to damages in consequence of not being allowed to perform after being advertised to appear. On appeal by the deft. :—

*Held*, that the county court judge was wrong in taking the view that, inasmuch as the plt. was not allowed to perform, he was entitled to damages for breach of contract, and that the judge ought to have considered whether, upon the facts in regard to the one

**CONTRACT (Breach)—continued.**

stage rehearsal which the plt. attended, the deft. was justified in coming to the conclusion at which he arrived and not allowing him to perform. *ZAMCO v. HAMMERSTEIN*

Div. Ct. 29 T. L. R. 217

**Building Contract.**

See ARBITRATION, BUILDING CONTRACT, and SCOTTISH LAW.

**Company.**

— Voluntary winding-up—Summons in winding-up to rescind contract—Jurisdiction.

See COMPANY—WINDING-UP — Rescission of Contract.

**Consideration.**

— Failure.

See PATENT—Licence.

**Corporation.**

— Contract not under seal.

See LOCAL GOVERNMENT — Urban District Council.

**Docks.**

— Preferential right to occupy berth.

See DOCKS.

**Duration.**

— Statute of Frauds (29 Car. 2, c. 3)—Memorandum in writing—Construction of memorandum—Annuity or allowance—Period of—Mere expression of intention to grant allowance — Termination at death of grantor.

See FRAUDS, STATUTE OF.

**Fraud.**

See FRAUD.

**Frauds, Statute of.**

See FRAUDS, STATUTE OF.

**Husband and Wife.**

See HUSBAND AND WIFE.

**Illegality.**

Company—Director—Payment to director to promote interests of particular shareholder—Illegal consideration—Illegality not pleaded.

A co., having spent all its money, applied to the deft. to supply additional capital by taking shares. The deft. agreed to do so on terms, one of which was that he should have representatives on the board.

The co. having approved this agreement in general meeting, the deft. appointed the plt. to act as his representative to look after his (the deft.'s) interests, for which services the deft. was to pay the plt. 200% a year out of his own pocket so long as the plt. remained a director.

In an action brought by the plt. to recover remuneration calculated at the rate of 200% a year the jury found that the deft. had agreed to pay the plt. 200% a year so long as he remained a director, and they further found that the agreement did not contemplate that the plt. should promote the interests of the deft. even

**CONTRACT (Illegality)—continued.**

though such interests were not identical with those of the whole body of shareholders:

*Held* (Vaughan Williams L.J. dissenting), upon those findings, that the bargain was not corrupt, the co.'s assent to and approval of the agreement between the plt. and the deft. being sufficient to divest the transaction between the parties of any character of illegality, and that the plt. was therefore entitled to recover his remuneration.

Decision of AVORY, J. affirmed. *KREGOR v. HOLLINS* - - - C. A. 109 L. T. 225

**Implied Term.**

*Performances by military band—Implied term that engagement to be subject to exigencies of military service.*

*Semble*, in a contract by which a military band is engaged to play at civilian entertainments there is an implied term that the engagement is subject to any claims upon the band as to their military duties. *WOOD v. THE VICTORIA PIER AND PAVILION (COLWYN BAY) CO., LD.* - Scrutton J. 29 T. L. R. 317

*Sale of goods—Removal of crushed rock—Buyer prevented from fulfilling contract by failure of seller to do his part—Claim by buyer for damages.*

The plt. contracted with a mining co. to remove waste rock then lying in the waste dump at the mine within a period of two years, provided it did not exceed 50,000 tons, the co. to provide a crusher, and the rock so crushed to be put on rails and made available for sale. The crusher provided was capable only of crushing three tons per hour, and as the co. never did anything to put it in a condition to do more, the work, owing to the incapacity of the crusher, had to be stopped. The plt. claimed damages:—

*Held*, that as it appeared from the written contract that both parties had agreed that something should be done, which could not effectually be done unless both concurred in doing it, although there were not express words to that effect in the contract, it must be construed as meaning that each party had agreed to do all that was necessary to be done on his part for the carrying out of the work. The defts. had failed to provide an adequate crusher, and had therefore failed to carry out their part of the contract.

*Mackay v. Dick*, 6 App. Cas. 251, followed. *KLEINERT v. ABOSSO GOLD MINING CO., LD.* P. C. 58 S. J. 45

**Indemnity.**

See INDEMNITY.

**Infant.**

See INFANT.

**Insurance.**

— Insurance company—Winding-up—Proofs—Valuing a policy—Breach of contract—Measure of damages.

See COMPANY—WINDING-UP—Proof.

**Marriage.**

See FRAUDS, STATUTE OF, and HUSBAND AND WIFE.

**CONTRACT—continued.****Public Policy.**

- Husband and wife—Reconciliation—Agreement for future separation.  
See HUSBAND AND WIFE.

**Railway.**

- Carriage of goods.  
See RAILWAY.

**Rescission.**

- See COMPANY—WINDING-UP—Rescission of Contract.

**Restraint of Trade.**

- See RESTRAINT OF TRADE.

**Sale of Goods.**

- See SALE OF GOODS.

**Sale of Land.**

- See FRAUDS, STATUTE OF.

**Service.**

*Injunction—Agreement to devote whole time—Negative stipulation—Breach of contract.*

In 1912 the plts. and the deft. agreed to have built for them a steam trawler, and to run it as partners, and that the deft. should act as skipper for the trawler for the firm. The arrangement was carried out by two agreements, both dated July 11, 1912. By one of these agreements it was provided (inter alia) as follows: (1.) "The skipper shall become and be from and after the said steam trawler shall have been delivered to the principals and thenceforth until the expiration or sooner determination of the said term of ten years the skipper of such steam trawler . . . ." (3.) "The skipper shall during the period aforesaid give his whole time, attention, ability and energies to the performance of his duties as such skipper as aforesaid and shall not give his time or personal attention to any other business or occupation."

The deft. had threatened that he would not sail in the partnership trawler, but that he would sail under another owner.

This was a motion for an injunction to restrain the deft. from sailing or acting as skipper in or to any trawler or vessel other than the partnership steam trawler without the consent of the plts., and from giving his time or personal attention as skipper or otherwise to any business or occupation other than the occupation of acting as skipper to the partnership trawler contrary to the provisions of the agreement of service of July 11, 1912.

Warrington J. held that the negative stipulation in the agreement could not be enforced by injunction.

*Whitwood Chemical Co. v. Hardman* [1891] 2 Ch. 416; *Mutual Reserve Fund Life Association v. New York Life Insurance Co.* (1896) 75 L. T. 528; *Ehrman v. Bartholomew* [1898] 1 Ch. 671; *William Robinson & Co., Ltd. v. Heier* [1898] 2 Ch. 451; and *Lumley v. Wagner* (1852) 5 De G. & Sm. 485; 1 De G. M. & G. 604, referred to. Motion refused. *CHAPMAN v. WESTERBY* - - - *Warrington J.* [1913] W. N. 277; 58 S. J. 50

**CONTRACT (Service)—continued.**

*Construction—Secret process—Restraint of trade—Qualified covenant—Validity—Reasonableness—Severable contract—Onus of proof—Injunction.*

The deft. entered the employment of the plts., who employed secret processes, under an agreement by which he was to acquire knowledge of their manufactures in accordance with their secret processes and to hold as confidential their secrets or secret processes and not at any time to communicate any of the plts.' formulæ, processes, or machinery to any person, and not "within the British Empire or the Continent of Europe for five years" after leaving their employment directly or indirectly enter into or be engaged in the business of manufacturing or selling carbon papers and ribbons or in any business which for the time being might be carried on by the plts.

After leaving the plts.' employment the deft., who had obtained particulars of a secret machine of the plts.' and formulæ and of materials used by them, became manager to a co. which manufactured goods similar to that of the plts. :—

*Held*, on a motion for an interlocutory injunction in an action to enforce the agreement, that the deft. had made an improper use of the plts.' secret formulæ or processes of manufacture within the first branch of the agreement which did not extend to processes in common use and to which considerations of time and space did not apply, and his breach of that part of the covenant ought to be restrained. The covenant restraining the deft. from engaging for five years in any business which the plts. might carry on would be too wide, but was severable from the rest of the second part of the agreement. The covenant in that part being qualified both as to time and space, the onus of proving that it was unreasonable lay upon the deft., and, the evidence shewing that the covenant was necessary for the proper protection of trade, this part of the covenant was held not to be unreasonable, and an interlocutory injunction granted in the terms of the covenant down to the words "carbon papers and ribbons." *CARIBONUM CO., LD. v. LE COUCH* - - - *Eve J.* 109 L. T. 385

See WORKMEN'S COMPENSATION.

**Specific Performance.**

*Uncertainty—Part performance—Action for damages.*

*Per Buckley L.J.*: A contract which is void for uncertainty is not rendered certain by part performance, but where a contract is complete in itself, in that a defined act is to be done upon reasonable terms, evidence is admissible as to what terms are reasonable, and the conduct of the parties may be the best evidence upon this point.

Passage in *Fry* on Specific Performance, 3rd ed., p. 174, considered. *WARING & GILLOW, LD. v. THOMPSON* C.A. 29 T. L. R. 154

**Termination.**

*Agreement to repurchase shares "at such times as suit my convenience and at no other times"—Whether agreement terminated by death of intended purchaser.*

W. agreed to repurchase from the plt.

**CONTRACT (Termination)**—*continued*.

certain shares for 150*l*. The agreement contained a provision that W. should repurchase them "at such times as suit my convenience and at no other times," and a further provision that he should at the date of the agreement hand to the plt. a sum of 20*l*., and subsequently a further sum of an unspecified amount, the 20*l*. to be the first of the payments towards the 150*l*. W. paid the plt. 20*l*. and a further sum of 15*l*., but died before paying anything more. In an action on the contract by the plt. against W.'s administratrix :—

*Held*, that the contract was not put an end to by the death of W., and that the plt. was entitled to recover out of his assets 115*l*., the balance of the 150*l*. **BARNES v. WILSON**

Pickford J. 29 T. L. R. 639

**Time.**

- Time of the essence of the contract.  
*See* TIME.

**Tithe Rent-Charge.**

- Contract by occupier to pay to owner of land sums paid by him on account of.  
*See* TITHE RENT-CHARGE.

**CONTRACTING OUT**—Workmen's compensation—Scheme of compensation—Re-certification—Ballot—Jurisdiction of county court judge.

*See* WORKMEN'S COMPENSATION.

**CONTRIBUTORY** — Company — Winding-up — Contributories.

*See* COMPANY—WINDING-UP — Contributories, List of.

**CONVERSION (EQUITY)** — *Beneficiary and trustee same person*—*Will*.

Testator, after appointing his wife and daughter trustees of his will, gave all his real and personal estate to them "upon trust to sell as and when they think proper" and after payment of his debts and expenses to pay the net income arising therefrom to his wife for life and after her death he gave "all my real and personal estate and the proceeds of such of my real estate as may have been sold" to his daughter absolutely.

The wife and daughter survived the testator.

The daughter having died in the lifetime of her mother, the question arose (at the death of the latter) whether the testator's real estate, not having been sold, passed, as converted, to the daughter's next of kin or, as unconverted, to her heir.

Eve J. held that the fact of the trustees and the beneficiaries being the same persons did not prevent conversion of the real estate. The next of kin therefore took it as personality. *In re* NEWBOULD. **ANDERTON v. NEWBOULD**

Eve J. [1913] W. N. 211

- Partition action—Infant—Request for sale—Sale for infant's benefit.  
*See* PARTITION.

*Postponement*—*Tenant for life and remainderman*—*Will*—*Trust for conversion*—*Power to*

**CONVERSION (EQUITY)**—*continued*.

*postpone*—*Residue*—*Estate pur autre vie*—*Policies on life of cestui que vie*—*Premiums, whether payable out of capital*.

Testator devised and bequeathed his residuary real and personal estate to trustees upon trust to sell and convert and to pay the income of the proceeds to his wife for life or during widowhood and after her death or remarriage to divide his estate into six equal parts which he settled upon his six children for life with remainder to their respective children absolutely, with power for his trustees to retain his estate in its then state of investment, unless directed by his wife to sell, and with a proviso that until such sale the income of his estate should be paid to the persons to whom the income of the proceeds of his residuary estate would for the time being be payable. The testator's estate included an estate pur autre vie in certain funds which produced about 24*l*. a year and two policies of assurance for 1000*l*. and 750*l*. respectively, the annual premiums on which amounted to about 60*l*. The cestui que vie had disappeared some years ago and his whereabouts was not known :—

*Held*, that the trustees were entitled to postpone the sale both of the life interest and the policies, and that the premiums on the policies were payable out of capital.

*In re* Bennett [1896] 1 Ch. 778, 787, followed. *In re* SHERRY. **SHERRY v. SHERRY**

Warrington J. [1913] 2 Ch. 508 ;  
109 L. T. 474

*Postponement*—*Trust for sale*—*Power to postpone*—*Settlement of proceeds*—*Share vested in possession*—*Right of beneficiary to insist on immediate sale*—*Will*.

Appeal from Warrington J.

By his will dated Dec. 11, 1908, a testator devised and bequeathed all his real and personal estate to his trustees upon trust for sale and conversion, and, after paying his funeral and testamentary expenses and debts and pecuniary legacies, to hold the residue of the proceeds of such sale and conversion upon the trusts therein-after declared. The will contained a clause that the trustees might in their absolute and uncontrolled discretion postpone the sale, calling in, or conversion of the residuary real and personal estate, or any part thereof, including leaseholds or other property of a terminable or wasting nature for such a time as they should think fit, without being answerable for loss, and the trustees were to stand possessed of the proceeds of sale of the residuary estate in trust to pay thereout an annuity of 50*l*. to the testator's wife during her life or widowhood, and subject thereto in trust for the testator's children who should attain the age of twenty-one years in equal shares as tenants in common; and there was a clause that the capital of his residuary estate should not be divisible among his children until his youngest surviving child should attain the age of twenty-one years.

The testator died on Mar. 7, 1911. He left seven children surviving him, two of whom attained the age of twenty-one years. One of these two, Phillip, thereupon claimed that he was entitled to be paid his one-seventh share of the testator's residuary estate (subject to

**CONVERSION (EQUITY)—continued.**

provision being made for the annuity to the widow).

An originating summons was issued to determine (inter alia) this point.

The testator's estate consisted principally of freehold and leasehold houses near London, some of which the trustees had sold and out of the proceeds of sale had paid estate duty and some of the pecuniary legacies; but they were advised that they could not at present sell at anything like reasonable prices, and in the exercise of their discretion they desired to postpone the sale until a favourable opportunity arrived.

Warrington J. held that, notwithstanding the direction in the will that the capital of the residuary estate should not be divisible until the youngest child attained twenty-one, Philip became entitled on attaining twenty-one to a vested share, but (following the decision of Swinfen Eady J. in *In re Horsnail, Womersley v. Horsnail* [1909] W. N. 74; [1909] 1 Ch. 631) that he was not entitled, so long as the trustees in the bona fide exercise of their discretion determined to postpone the realization of the testator's estate, to have his share raised or paid to him or appropriated in specie.

Philip appealed from the latter part of the order.

The C. A. dismissed the appeal, holding that the order was right and approving the decision in *In re Horsnail*, supra. *In re KIPPING. KIPPING v. KIPPING* - C. A. [1913] W. N. 315; [1914] 1 Ch. 62

*Power to postpone—Trust for conversion—Will—Shares in residue—Advances in lifetime of testator—Subsequent authorized advances by trustees—Hutchnot—Difficulty of realizing of estate—Principle of ascertaining income pending distribution—Appropriation in specie—Unauthorized investments—Settled shares—Jurisdiction of Court.*

Testator, by his will dated Nov. 22, 1892, devised and bequeathed his residuary real and personal estate to three trustees, upon trust to sell and convert and to stand possessed of the proceeds upon trust for all his children, except his son J. A., who being a son or sons had attained or should attain the age of twenty-one years, or being a daughter or daughters had attained or should attain that age or should marry, to be divided between them in equal shares. He directed that all properties and investments acquired by him in the names of any of his children or advances to or for the benefit of his children should be treated as absolute gifts to such children of the properties, investments, and advances which might be taken in their names individually or given to or for their benefit, and that such children should not be liable to repay to him or his estate the consideration which he had paid for the properties or the amounts that might have been advanced or invested on such securities or otherwise. He further directed that in the division of his estate his trustees should equalize his children's shares as far as possible by treating all gifts to them as having been made in satisfaction or part satisfaction of their shares. The testator then settled the shares of his daughters, and declared that his trustees might

**CONVERSION (EQUITY)—continued.**

postpone the sale and conversion of his real and personal estate for so long as they should think fit, the income of the unconverted property to go to the persons to whom the income produced by the sale and conversion would for the time being be payable, if the sale and conversion had been actually made. The testator enumerated a list of investments upon which the moneys liable to be invested might be invested, which did not, however, include investment in the shares of private companies.

The testator died on Dec. 3, 1892, leaving six children other than J. A., who took no interest in the residue, namely, two sons and four daughters.

A considerable part of the testator's estate consisted of shares in a private co. called Cravens, Ltd. There was no market for these shares, and the trustees, although they had advertised, had been unable to obtain an offer for them.

During his lifetime the testator had made advances to certain of his children, and subsequently to his death the trustees had made further advances to two of his sons.

In their periodical accounts the trustees had, for the purpose of dividing the income, added to the income of the actual estate interest at 4 per cent. per annum on the advances to the children, and had then divided the total thus ascertained into six equal shares, and had paid one of such shares to each of the children, deducting in the case of an advanced child 4 per cent. on the amount of the advances to that child.

The plt., a married daughter and the only unadvanced child, contended that this principle of division was not correct and took out the present originating summons for the determination of the questions in dispute.

Warrington J. held that the method adopted by the trustees with regard to the advances was the correct one. It was not possible in this case to ascertain the value in money of each child's share as at the testator's death, and unless that could be done, *In re Hargreaves* (1903) 88 L. T. 100, could not be applied. The power to postpone conversion of the Craven shares applied only so long as the estate was retained as a whole and did not extend to enable the trustees to appropriate them to the settled shares of the daughters, when the estate was divided. The order would follow the terms of the first alternative of the question in the summons in *In re Poyser, Landon v. Poyser* [1908] 1 Ch. 828, 832, with the necessary adaptation. *In re CRAVEN. WATSON v. CRAVEN - Warrington J.* [1913] W. N. 347; 58 S. J. 138

*Power to postpone—Trust for sale and conversion—Will—Residuary devise and bequest—Shares in private company—Appropriation of in respect of shares in residue—Right of one residuary legatee to transfer of his proportion of appropriated shares of company—Discretion of trustees.*

Appeal from a decision of Warrington J. [1913] W. N. 148.

H. D. Marshall, by his will dated Nov. 12, 1902, devised and bequeathed his residuary real and personal estate, which included certain shares and stock in Marshall, Sons & Co., Ltd.,

**CONVERSION (EQUITY)—continued.**

to his trustees upon trust to sell, call in and convert, and he empowered them to postpone the sale, calling in and conversion of the whole or any part of his residuary estate during so long as to his trustees in their uncontrolled discretion should seem proper, and in particular to retain any shares, stocks and securities of Marshall, Sons & Co., Ltd., or any other investments held by him at his death, during any period without being liable for any loss arising thereby. He then divided his estate into certain shares, some of which he settled.

The testator died on Mar. 8, 1906. He held a very large number of shares in Marshall, Sons & Co., Ltd.; several of his trustees were directors of the co. and had large holdings; and it was stated that if these shares were all kept together the trustees would be able to outvote all the other members. There were altogether 213 ordinary and 151 preference shareholders, and the shares of the co. were quoted on the lists of the Sheffield and Lincoln Stock Exchanges.

In the events which had happened P. J. Marshall, a son, and two of the grandsons of the testator were absolutely entitled to certain shares of the residuary estate, and claimed to have transferred to them their proportion of the shares in Marshall, Sons & Co., Ltd.

On an originating summons taken out by the trustees for the determination (inter alia) of the question whether the trustees ought to transfer to them, in or towards satisfaction of their shares of the residuary estate, any, and if so, how many, of the testator's shares in the co., Warrington J. held that the co. was a private co., and that the trustees were still entitled to exercise the discretion vested in them by the will.

P. J. Marshall and the two grandsons appealed.

The Court allowed the appeal, holding that the co. was a public co.; the trustees had not shewn that it was necessary or desirable to retain all the shares; the power of postponement was for a reasonable time only; and the right of the absolute owners to have a transfer of their shares ought to prevail over the discretion of the trustees. *In re MARSHALL, MARSHALL v. MARSHALL* - C. A. [1913] W. N. 338; 58 S. J. 118

— Settlement—Omission of words of limitation—Equitable estate in freehold and copyhold property—Estate for life of trustee—Trust for conversion.  
See SETTLEMENT.

**CONVERSION (TORT)—Fraudulent.**

See CRIMINAL LAW—Larceny.

— Infant—Contract—Goods sold and delivered—Necessaries—Bill of sale—Fraudulent misrepresentation as to age—Equitable relief.  
See INFANT—Contract.

**CONVEYANCE**—Construction—Express or implied grant—Agricultural ditch—Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Injunction—Damages.  
See LOCAL GOVERNMENT—Drainage.

**CONVEYANCING AND LAW OF PROPERTY**

**ACT, 1881**—Infant—Maintenance—Maintenance clause in will ceasing on marriage.

See WILL—Maintenance Clause.

— Mortgage—Foreclosure proceedings—Licence by mortgagees to work peat—Jurisdiction of Court to sanction.

See MORTGAGE—Foreclosure.

— Vendor and purchaser—Omission to prevent acquisition of title under Statute of Limitations—Liability of vendor—Measure of damages.

See VENDOR AND PURCHASER.

— Water—Artificial watercourse—Mill stream—Riparian proprietors—Common owner—General words.

See WATER—Artificial Watercourse.

**CONVICTION**—Criminal law.

See CRIMINAL LAW AND JUSTICES.

— Motor car.

See MOTOR CAR.

**COPIES**—Documents—Injunction—Privilege—Restraint of publication—Documents improperly obtained—Secondary evidence.

See EVIDENCE—Public Document.

**COPY**—Abstract of Factory Act.

See EVIDENCE—Secondary Evidence.

**COPYHOLDER**—Mineral rights duty—Grant of right to let down surface—Lease of "right to work the minerals."

See REVENUE—Mineral Rights Duty.

**COPYHOLDS**—Settled estates—Trustees selling under power of sale—Right to have their nominee admitted.

See VENDOR AND PURCHASER.

— Settlement—Omission of words of limitation—Equitable estate in freehold and copyhold property—Estate for life of trustee—Trust for conversion.

See SETTLEMENT.

**COPYRIGHT.**

*Infringement*, col. 118.

*Literary Work*, col. 120.

*Music*, col. 120.

*Title*, col. 121.

**Infringement.**

*Dramatic sketch—Stock incidents—Combination—Reproduction—No similar sentence.*

Under s. 1 of the Copyright Act, 1911, the person who is the author and the owner of the copyright in a novel is entitled to an injunction to restrain the performance of a dramatic sketch containing a series of stock incidents in combination which have been taken from the pl't's book, even though no sentence used in the sketch is similar to any sentence used in the book.

Decision of Sargant J., 29 T. L. R. 570, affirmed. *CORELLI v. GRAY* - C. A. 30 T. L. R. 116



**COPYRIGHT (Infringement).**—*continued.*

• *Infringement before July, 1912—Registration—Action brought after that date—Whether proof of registration necessary—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 24, 36.*

Appeal from the Haverfordwest County Court.

The action was brought for infringement of copyright in paragraphs in a newspaper. The infringements, of which there were a series, all occurred before July 1, 1912, the date on which the Copyright Act, 1911, came into force. The action was commenced on Sept. 21, 1912. The deft. by way of defence relied upon the fact that the plts. had not before commencing the action registered the paragraphs in question in the registry of the Stationers' Company pursuant to s. 24 of the Copyright Act, 1842.

By s. 38 of the Copyright Act, 1911, the Act of 1842 is repealed, and the Act of 1911 does not require registration as a condition precedent to an action. By s. 24 of the Act of 1911, where, at the commencement of that Act, there was copyright in an existing work, the owner is to be "entitled to the substituted right set forth in the second column of the First Schedule," which is "copyright as defined by this Act"; and copyright under the new Act is a different right from copyright under the old Act, differing in, among other respects, the term of its duration.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38, where any Act passed after the commencement of that Act repeals any other enactment, unless a contrary intention appears, the repeal is not to (c) "affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed," or (e) "affect any investigation, legal proceeding, or remedy in respect of any such right," &c.

For the plts. it was contended that registration before action was merely matter of procedure, and that they were entitled to enforce the remedies for the causes of action which had accrued before the new Act came into force, under the procedure provided by that Act, under which registration was not necessary. The county court judge gave judgment for the deft. The plts. appealed.

The Court (Phillimore and Pickford JJ.) held that no one was entitled to sue under the new Act except for infringements of copyright under that Act, and that although the plts.' remedies for the infringements of copyright under the old Act were preserved by the Interpretation Act, they were so preserved with the disadvantage that they must prove registration before action brought. Appeal dismissed. **EVANS AND ANOTHER v. MORRIS**  
Div. Ct. [1913] W. N. 58

— Secret process—Action to restrain divulging trade secrets and infringement of copyright in illustrated catalogues—Motion for interim injunction—Injunction granted.

*See* **TRADE SECRET.**

**COPYRIGHT—continued.****Literary Work.**

*Card-index system—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 35.*

The plts. invented an outfit consisting of a box in which cards of different colours and with different headings were inserted, the object being to enable an employer to get readily at the insurance card of a particular servant. The cards merely had on them the words "name" and "address" and other words that might be used by anybody:—

*Held*, that the cards were not an original "literary work" within s. 35 of the Copyright Act, 1911, and therefore were not the subject of copyright within s. 1. **LIBRACO, LD. v. SHAW WALKER, LD.** - Warrington J. 30 T. L. R. 22; 58 S. J. 48

**Music.**

*Gramophone records—Musical work—Records made before commencement of Act—Sale since commencement—Royalties—Affixing adhesive label to record—Validity—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 2, 19, 24—Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, cl. 4.*

Appeal from a judgment of Phillimore J.

The plt., in the early part of 1911, published an original musical work. At some time before the date when the Copyright Act, 1911, came into operation (July 1, 1912) the defts., who were manufacturers and sellers of gramophone records, manufactured abroad and imported into England gramophone records of the work, and they sold such records in England since July 1, 1912, without the plt.'s consent and without paying him royalties. The plt. claimed an injunction to restrain the defts. from selling such records without his consent, and an account and damages.

The question was whether the defts. were entitled, without the consent of the plt. and without paying royalties, to sell, after July 1, 1912, records lawfully made before that date.

The Board of Trade made regulations under s. 19, sub-s. 6, of the Act, providing (cl. 4) that, unless otherwise agreed, royalties should be paid by means of adhesive labels purchased from the owner of the copyright and affixed to the records.

The defts. contended that this regulation was ultra vires.

Phillimore J. held that the defts. were entitled to sell the records without the plt.'s consent and without paying royalties, and he gave judgment for them. He also held that the regulations were not ultra vires. The plt. appealed and the defts. gave cross-notice of appeal.

The C. A. held that the sale of the records was an infringement of the plt.'s copyright, and that therefore the plt. was entitled to judgment. They also held that the regulations as to affixing labels on the records were not ultra vires. The appeal was therefore allowed and the cross-appeal dismissed. **MONCKTON v. PATHÉ FRÈRES PATHEPHONE, LD.**  
C. A. [1913]

W. N. 347; 30 T. L. R. 123; 58 S. J. 172

**COPYRIGHT—continued.****Title.**

*Dramatic piece—Title of play—The proverb "Where there's a will there's a way" as the title of a play cannot be the subject of copyright.*

Whether the mere title of a play can be treated as the subject of copyright. *quere.*  
**BROEMEL v. MEYER - Warrington J. 29 T. L. R. : 57 S. J. 145** (sub nom. **BROAD v. MEYER**)

**CO-RESPONDENT.**

*See* **DIVORCE** and **FOREIGN JUDGMENT.**

**CORONER—Order for second inquest—Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6.**

Order made directing second inquest to be held on the body of a person, where the facts shewed that further investigation as to the circumstances attending the death of the person was necessary. *Ex parte* **ATT.-GEN.**

**Div. Ct. 29 T. L. R. 199**

**CORPORATION—By-laws—Validity of municipal by-laws—Validity of municipal debentures—Limitation—Appeal from British Columbia.**

*See* **CANADA—British Columbia.**

— Contract not under seal.

*See* **LOCAL GOVERNMENT.**

— Corporation duty — Mortgage — Fund for redemption of debenture stock issued by corporation.

*See* **REVENUE—Corporation Duty.**

— Loan—Burgh—Issue of redeemable stock by municipal corporation—"Redeemable."

*See* **SCOTTISH LAW.**

— Revenue—Duty on annual income of property belonging to or vested in bodies corporate and unincorporate.

*See* **REVENUE—Corporation Duty.**

**COSTS.**

*Action for.* *See* **SOLICITOR.**

*Bankruptcy.* *See* **BANKRUPTCY.**

*Company.* *See* **COMPANY—WINDING-UP.**

*Conveyance.* *See* **VENDOR AND PURCHASER.**

*Counsel, col. 122.*

*County Court.* *See* **COUNTY COURT.**

*Defendants, col. 122.*

*Discretion, col. 124.*

*Divorce.* *See* **DIVORCE.**

*Double or Treble Costs.* *See* **COUNTY COURT.**

*Ecclesiastical Law.* *See* **ECCLESIASTICAL LAW.**

*Good Cause, col. 124.*

*Indemnity.* *See* **COUNTY COURT.**

*Lands Clauses Acts.* *See* **SETTLED LAND.**

**COSTS—continued.**

*Licensing Acts.* *See* **LICENSING ACTS.**

*Motion, col. 125.*

*Passing-off.* *See* above, **Defendants.**

*Patent.* *See* **PATENT.**

*Probate, col. 126.*

*Sequestrators, col. 126.*

*Settled Land.* *See* **SETTLED LAND.**

*Shipping.* *See* **SHIPPING.**

*Solicitor.* *See* **SOLICITOR.**

*Special Jury, col. 126.*

*Trade Union.* *See* **MAINTENANCE.**

*Workmen's Compensation.* *See* **WORKMEN'S COMPENSATION**

**Action for.**

*See* **SOLICITOR.**

**Bankruptcy.**

— Jurisdiction—Official receiver—Unsuccessful application by—Order to pay costs personally.

*See* **BANKRUPTCY—Costs.**

**Company.**

— Voluntary liquidation—Unsuccessful litigation—Costs—Priorities.

*See* **COMPANY—WINDING-UP.**

**Conveyance.**

— Parcels—Plan—Falsa demonstratio.

*See* **VENDOR AND PURCHASER.**

**Counsel.**

— Counsel's fees.

*See* **COUNTY COURT—Costs, and PATENT—Costs.**

**County Court.**

*See* **COUNTY COURT—Costs.**

**Defendants.**

*Joinder of defendants — Action for passing-off against B. and W. & Sons — Charge of conspiracy against both defendants held to have failed—Action dismissed as against B. — W. & Sons submitting to an injunction, injunction awarded against them with costs up to the date of an offer by them except the increased costs by reason of the charge of conspiracy, which the plaintiffs were ordered to pay, as also the costs from the date of the offer—Principle of taxation—Objections by W. & Sons to the taxation allowed and the taxation remitted to the taxing Master for review.*

A passing-off action was brought against B. and W. & Sons, and a charge of conspiracy was made against both debts, which was held at the trial to have failed. The action was dismissed as against B. with costs. W. & Sons having submitted to an injunction as to passing-off, an injunction was awarded against them with costs up to the date of an offer made by them, except

**COSTS (Defendants)—continued.**

so far as the costs had been increased by the charge of conspiracy; the plts. were ordered to pay the increased costs, and the costs from the date of the offer with a set-off. *W. & Sons* delivered objections to the taxation of their bill of costs against the plts. and the plts.' bill of costs against them, alleging that the taxing Master had proceeded on a wrong principle, and that he ought to have allowed them all costs occasioned by B. having been joined as a deft. to the action. The taxing Master in reply said that the real substance of the action against both parties was passing-off, and that to allow *W. & Sons* all costs occasioned by the joinder of B. as a deft. would be virtually to give them the main portion of the costs of the action for passing-off in which they were defeated:—

*Held*, that the taxing Master had proceeded on a wrong principle; that the joinder of B. as a deft. was only relevant as regards the conspiracy charge; that the taxing Master must treat it as an action for passing-off to which an immaterial party had been joined, and then see how far the costs of *W. & Sons* had been increased by the joinder of that party. With that expression of opinion the taxing Master was directed to review his taxation.

The plts. were ordered to pay the costs of the application and of the objections of the defts.  
*W. & Sons. JOHN BRINSMEAD & SONS, LD. v. EDWARD GEORGE STANLEY BRINSMEAD AND WADDINGTON & SONS, LD.*

Warrington J. 30 R. P. C. 363

*Two defendants—Plaintiff successful against one defendant—Costs payable to successful defendant recoverable from unsuccessful defendant.*

The plt. sued the two deft. cos. claiming damages for personal injuries. He obtained a verdict against the first defts. but not against the second defts., and judgment was entered against the first defts. with costs and for the second defts. with costs:—

*Held*, that the plt. was entitled to recover from the first defts. the costs he was liable to pay to the second defts., notwithstanding that the first defts., although disclaiming responsibility, had not before the issue of the writ sought to throw responsibility on to the second defts. *BESTERMANN v. THE BRITISH MOTOR CAB CO., LD. AND THE LONDON GENERAL OMNIBUS CO., LD.*

Coleridge J. 29 T. L. R. 324

*Two defendants—Plaintiff successful against one defendant—Costs payable to successful defendant recoverable from unsuccessful defendant.*

The plt. sued the two deft. cos. to recover damages for personal injuries sustained by him owing to the negligence of the defts.' servants or the servants of one of them. At the trial the jury found that the accident was solely due to the negligence of the servants of the first defts., and they exonerated the servants of the second deft. co. from all blame:—

*Held*, that the plt. with his limited knowledge of the facts was entitled to bring his action against both defts., that the first defts., when they were applied to by the plt., ought

**COSTS (Defendants)—continued.**

to have said whether they alleged negligence against the second defts. or not, and that as they had not done so, the plt., although he was liable to the second defts. for costs, was entitled to recover those costs from the first defts. *VINE v. NATIONAL MOTOR CAB CO. LD. AND ANOTHER* - - - 29 T. L. R. 31.

*Two defendants—Plaintiff successful against one defendant—Costs payable to successful defendant recoverable from unsuccessful defendant.*

The plt. sued a motor-cab co. and an omnibus co. for damages for personal injuries. Before action the plt. first applied to the omnibus co. for compensation, but they denied liability and said that the accident was caused solely by the negligence of the motor-cab co.'s servant. On the refusal of the omnibus co. to admit liability the plt. applied to the motor-cab co. and they, while denying any liability on their part, did not throw the responsibility on to the omnibus co.

At the trial the jury found that the accident causing the plt.'s injuries was entirely due to the negligence of the motor-cab co.'s servant, and judgment was accordingly entered against that co. and in favour of the omnibus co.:—

*Held*, that the plt. was entitled to add to the costs which he could recover from the motor-cab co. the costs which he had to pay to the omnibus co. *MULHERN v. THE NATIONAL MOTOR CAB CO., LD.*

Banks J. 29 T. L. R. 677

See COUNTY COURT—Costs.

**Discretion.**

*Plea of Gaming Act—Depriving successful defendant of costs.*

In an action for a sum due on a bet the deft. pleaded the Gaming Act. On the case coming on for trial, the plt. admitted that, in view of the plea of the Gaming Act, he could not succeed, and he therefore consented to judgment for the deft. The deft. applied for judgment with costs:—

*Held*, that the Court had a discretion as to awarding costs, and in the circumstances would refuse to award them in favour of the deft. *LEVY v. JOHNSON*

Lawrence J. 29 T. L. R. 507

**Divorce.**

Desertion — Appeal from justices — Second summons — Res judicata — Wife's costs.  
 See DIVORCE—Desertion.

**Double or Treble Costs.**

See COUNTY COURT—Costs—Indemnity.

**Ecclesiastical Law.**

— Clergy Discipline Act, 1892, Criminal suit under — Appeal in matter of law—Practice.  
 See ECCLESIASTICAL LAW.

**Good Cause.**

Verdict for farthing—Application to disallow costs—Refusal—Opinion of jury on costs—

**COSTS (Good Cause)—continued.**

*Stay of execution—Discretion of judge—R. S. C., 1883, Order LVIII., r. 16.*

By Order LVIII., r. 16, "An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct":—

*Held*, that where in a libel action the jury find a verdict for the plt. for a farthing, and at the conclusion of the trial the judge refuses to deprive the plt. of costs, and on a subsequent day it appears from communications which have taken place with the jurymen since the trial that it was the opinion of the majority of the jury that the plt. should be deprived of costs, the judge is not entitled, in deciding whether he will grant a stay of execution pending an appeal, to take into consideration the opinion of the jury on the question of costs.

Judgment of Darling J., 29 T. L. R. 724, reversed. *WOOTTON v. SIEVIER AND OTHERS.*

C. A. 30 T. L. R. 165

**Indemnity.**

*See* COUNTY COURT—Costs—Indemnity.

**Lands Clauses Acts.**

— Settled land—Separate appearance of tenant for life.

*See* SETTLED LAND.

**Licensing Acts.**

*See* LICENSING ACTS—Licence—Compensation Authority.

**Motion.**

*Motion—Abandoned—Notice.*

On May 22, 1913, the plt. issued his writ claiming an injunction to restrain the deft. from erecting any building so as to obstruct the plt.'s ancient lights, and for a mandatory order. On May 24, pursuant to special leave, notice of motion for May 30 for an interim injunction was served by the plt. with the writ. On May 30 the motion stood over for a week by arrangement. On June 6 counsel for the plt. declined to move his motion, asking for a further adjournment for a week on the ground that the plt. was abroad. The deft. objected to any further adjournment, and asked for the costs of the motion as an abandoned motion. No notice of this claim for the costs was given by the deft. to the plt. before the matter came on in Court.

Eve J. said that the only statement on the matter in Seton's Judgments and Orders, 7th ed., p. 380, was that it was usual for a deft. to give notice to the other side of his claim for the costs of an abandoned motion, but there appeared to be nothing in the rules which rendered it incumbent that such a notice should be given. The deft. was therefore entitled to have the costs of this abandoned motion. *HINDE v. POWER*

Eve J. [1913] W. N. 184

C.C.D.

**COSTS—continued.****Passing-off.**

*See* above, Defendants and PASSING-OFF—Costs.

**Patent.**

*See* PATENT—Infringement and Threats Action.

**Probate.**

*Will and two codicils proved in common form by executors—Third codicil brought to their notice two years afterwards—Action by beneficiary against executors—Defence of undue execution and want of knowledge and approval—Codicil admitted to probate—Executors condemned in costs.*

In a probate action, where the plt. and a deft., daughters of the testator, were practically the only persons interested in the residue under a will and two codicils thereto, the plt. propounded a third codicil, two years after probate of the will and earlier codicils had been granted. The executors of the will desired the plt. to propound the third codicil before they would consent to prove it, and in their defence pleaded that the codicil was not duly executed and that the testator did not know and approve of the contents thereof. The codicil was admitted to probate and the executors were condemned in costs. *In re SPEKE. SPEKE v. DEAKIN AND OTHERS* - Barchrave Deane J. 30 T. L. R. 73

**Sequestrators.**

A writ of sequestration issued to enforce an order of Court, the defts. being the sequestrators. Under the writ they claimed certain property which had been purchased by the plt., they alleging fraud and mala fides in the plt. On the trial of an issue the jury found in favour of the plt.:—

*Held*, that although the defts., as sequestrators, had acted under the direction of the Court, that did not justify them in taking action as to property to which they had no right, and therefore that they were liable for the costs of the action. *WIEBALCK v. TOLD AND OTHERS* - Bucknill J. 29 T. L. R. 741

**Settled Land.**

*See* SETTLED LAND.

**Shipping.**

*See* SHIPPING—Collision.

**Solicitor.**

— Solicitors' costs.

*See* SOLICITOR.

**Special Jury.**

*Certificate for special jury—"Immediately after verdict"—Juries Act, 1825 (6 Geo. 4, c. 50), s. 34.*

The Juries Act, 1825, s. 34, provides that the person or party who shall apply for a special jury shall pay all the expenses occasioned thereby without having any further allowance for the same on taxation than he would be entitled to, if the case had been

**COSTS (Special Jury)**—*continued.*

tried by a common jury; "unless the judge before whom the cause is tried shall, immediately after the verdict, certify, under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury."

On Jan. 27, 1913, an action was tried with a special jury. The verdict was for the plt. upon one issue and for the defts. upon another. Judgment was given for the plt. for a fixed sum with the costs of one issue. Each party was ordered to pay the costs of the issue on which they had failed, and an account, which was not opposed, was directed. No certificate for a special jury was then asked for or given. On April 24, 1913, on an application relating to the account, the defts.' counsel applied for a certificate, and the judge gave it:—

*Held*, that the judge had not certified in time, for the word "immediately" must be construed literally, unless special circumstances prevented the certificate being made or applied for at the trial or the judge expressly reserved his decision on the point, and in either of such cases it should be applied for at the first reasonable opportunity.

*Forsdike v. Stone* (1868) L. R. 3 C. P. 607, followed. *BARKER v. LEWIS & PEAT* C. A. [1913] 3 K. B. 34; 82 L. J. (K. B.) 843; 108 L. T. 941; [1913] W. N. 175; 29 T. L. R. 565; 57 S. J. 577

**Trade Union.**

— Slander on officer as such—Action by officer  
— Indemnity by union against costs—  
Ultra vires.  
*See* MAINTENANCE.

**Workmen's Compensation.**

*See* WORKMEN'S COMPENSATION.

**COUNSEL**—Absence.

*See* SOLICITOR—Right of Audience.

— County court.

*See* COUNTY COURT—Costs.

— Fees.

*See* COSTS—Counsel, and COUNTY COURT—Costs.

— Opinion—Appeal in forma pauperis.

*See* APPEAL—Divisional Court.

**Statements by.**

Counsel ought not to inform the Court of any facts he has personally investigated. *REX v. BENJAMIN (ARTHUR)*

C. C. A. 8 Cr. App. R. 146

**COUNTY**—Creation of county borough—Adjustment of financial relations between county and county borough.

*See* LOCAL GOVERNMENT—County Borough.

**COUNTY COURT RULES, 1913, W. N. 1913**  
(April 19), p. 213.

**COUNTY COURT.**

*Appeal*, col. 128.

*Company*. *See* STANNARIES.

*Costs*, col. 129.

*Evidence*, col. 130.

*Inspection*, col. 130.

*Interpleader*, col. 130.

*Jurisdiction*, col. 131.

*Non-suit*, col. 131.

*Pleading*, col. 132.

*Postponement of Trial*, col. 132.

*Remitted Action*, col. 132.

*Removal to High Court*, col. 133.

*Stay of Proceedings*. *See* ARBITRATION.  
*Surrender of Tenancy*. *See* LANDLORD AND TENANT.

*Workmen's Compensation*. *See* WORKMEN'S COMPENSATION.

**Appeal.**

*Appeal from county court*—Refusal of county court judge to non-suit at conclusion of plaintiff's case—Evidence subsequently called on behalf of defendant—Appeal by defendant to Divisional Court—Point taken that county court judge ought to have non-suited plaintiff—Consideration of all evidence given in county court.

At the close of the plt.'s case in an action brought in a county court it was objected upon behalf of the defts. that there was no case for them to answer. The county court judge overruled the objection. Evidence was then called on their behalf, and the county court judge gave judgment for the plt. Upon appeal to a Div. Ct. :—

*Held*, that if the Div. Ct. thought that upon the whole of the evidence given in the county court the county court judge was justified in coming to the conclusion he did, it ought not to overrule his decision, even if he was wrong in not non-suiting at the conclusion of the plt.'s case.

*Great Western Ry. Co. v. Rimell* (1856) 18 C. B. 575 (there entitled *Great Northern Ry. Co. v. Rimell*), considered.

The Court accordingly considered the whole of the evidence given in the county court and, finding that there was no evidence upon which the county court judge could give judgment for the plt., allowed the appeal. *GROVES v. CHELTENHAM AND EAST GLOUCESTERSHIRE BUILDING SOCIETY* Div. Ct. [1913] 2 K. B. 100; 82 L. J. (K. B.) 664; 108 L. T. 946; [1913] W. N. 47

—Appealing, Time for—County court action—  
Appeal from county court—Appeal from judgment of Divisional Court on such appeal—Final order.  
*See* APPEAL—Court of Appeal.

**Company.**

—Winding-up—Jurisdiction—Mining partnership of two.  
*See* STANNARIES.

COUNTY COURT—*continued.*

## Costs.

## Counsel.

*Taxation—Allowance for two counsel—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 72, 164—County Court Rules, 1903 and 1904, Order XXIIA, r. 27; Order LIII, r. 45.*

On the taxation of the costs of an action brought in the county court under the extended jurisdiction conferred by the County Courts Act, 1903, in which the successful party has been represented at the trial by two counsel, there is no power to allow the fees of more than one counsel. *BATES v. GORDON HOTELS, LD.* Div. Ct. [1913] 1 K. B. 631.

82 L. J. (K. B.) 441; 108 L. T. 510; [1913] W. N. 58; 29 T. L. R. 298; 57 S. J. 308

## Note.

But see now County Court Rules, 1913, Order LIII, W. N. 1913 (April 19), p. 213.

## Discretion.

*Power of judge to deprive successful plaintiff of costs—Dissatisfaction with evidence of plaintiff's witness.*

The fact that a judge in the county court is dissatisfied with the evidence of a witness called on behalf of the plts. in an action is no ground for depriving the plts. of costs to which they are entitled as the result of succeeding in the action. *HUDSONS, LD. v. DE HALPERT*

Div. Ct. 108 L. T. 416; 29 T. L. R. 257

*Uncertainty of plaintiff as to legal rights—Joinder of alternative defendants—Unsuccessful defendant ordered to pay costs of successful defendant—Jurisdiction.*

Appeal from the Stroud County Court.

The plt. claimed damages for trespass, and an injunction. The defts., Mr. and Mrs. Moore, asserted that Mrs. Moore was entitled to a right of way and that the alleged acts of trespass were committed in exercise of that right; and the plt. joined Rowell as a deft., claiming against him, in the alternative and in the event of its being held that Mrs. Moore had the alleged right of way, damages for breach of covenant for title or for quiet enjoyment.

The county court judge decided that Mrs. Moore was not entitled to a right of way and gave judgment for the plt. against the defts. Moore and in favour of the deft. Rowell; and he further ordered the defts. Moore to pay to the plt. the costs which he was ordered to pay to the deft. Rowell. The defts. Moore appealed.

The Court (Bray and Lush JJ.) differed. Bray J. being of opinion that the defts. were entitled to judgment in the action, and Lush J. being of the contrary opinion. The order that the defts. Moore should pay the costs of the deft. Rowell was discharged.

*Bullock v. London General Omnibus Company* [1907] 1 K. B. 264, distinguished. *POULTON v. MOORE AND OTHERS* Div. Ct. [1913] W. N. 349

COUNTY COURT (Costs)—*continued.*

## Indemnity.

*Taxation of costs—Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97), s. 2—Indemnity as to costs incurred "in and about any action."*

Where an action is brought in the county court for a matter in respect of which the plt., if successful, is entitled under the Limitations of Actions and Costs Act, 1842, to receive a "full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action," the plt.'s costs, so far as they are incurred "in the action," ought to be taxed according to the county court scale; but the plt. is further entitled, under the indemnity against costs incurred "about the action," to recover all costs reasonably incurred by him as preliminary to the action, including the costs of taking counsel's opinion as to whether the action would lie. *HOUSE PROPERTY CO. OF LONDON v. WHITEMAN* Div. Ct. [1913] 2 K. B. 382; 82 L. J. (K. B.) 887; 109 L. T. 43; [1913] W. N. 130; 77 J. P. 319

## Evidence.

—Appeal from county court—Refusal of county court judge to nonsuit at conclusion of plaintiff's case—Evidence subsequently called on behalf of defendant—Appeal to Divisional Court—Consideration of all evidence given in county court. See above, Appeal.

## Inspection.

*Inspection of property — "Building in possession of party to action"—Tenants in common—County Court Rules, 1903 and 1904, Order XII, r. 3.*

By Order XII, r. 3, of the County Court Rules, 1903 and 1904, the Court may, upon the application of any party to an action or matter, make an order for the inspection of property as therein mentioned, and for the purpose aforesaid authorize any persons to enter upon or into any land or building in the possession of any party to such action or matter:—

*Held*, that an order cannot be made under the above rule to inspect the property of several tenants in common, some of whom are not before the Court.

*Kearsley v. Phillips* (1883) 10 Q. B. D. 465, followed. *COOMES & SON v. HAYWARD*

Div. Ct. [1913] 1 K. B. 150; 82 L. J. (K. B.) 117; 107 L. T. 715

## Interpleader.

*Judgment for a debt — Goods of judgment debtor taken in execution and sold — Claim by assignee of the debt to proceeds of sale — County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 156, 157—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 6; s. 89.*

Where a creditor, who has assigned a debt together with all securities for the same, subsequently recovers judgment against the debtor in the county court, and the goods of the judgment

**COUNTY COURT (Interpleader)—continued.**

debtor are taken in execution and sold, the assignee of the debt cannot claim the proceeds of sale under ss. 156 and 157 of the County Courts Act, 1888.

Judgment of Div. Ct. (Ridley and Lush JJ.) [1912] 2 K. B. 459, affirmed. *PLANT v. COLLINS, DEEBLEY, CLAIMANT - C. A.* [1913] 1 K. B. 242; 82 L. J. (K. B.) 467; 108 L. T. 177; [1912] W. N. 290; 29 T. L. R. 129

**Jurisdiction.**

*Shipping — Collision — Damage by ship to bwy — County Courts Admiralty Jurisdiction Act, 1868* (31 & 32 Vict. c. 71), s. 3, sub-s. 3—*County Courts Admiralty Jurisdiction Amendment Act, 1869* (32 & 33 Vict. c. 51), s. 4.

THE UPOERNE - Div. Ct. [1912] P. 160; 81 L. J. (P.) 110; 12 Asp. Mar. Law Cas. 281; 107 L. T. 860; 28 T. L. R. 370

**Non-suit.**

*Limitation of time — Plaintiff non-suited without consent on the opening of his case — Meaning of "act done in pursuance of any public authority" — Municipal Corporations Act, 1883* (46 & 47 Vict. c. 18)—*Public Authorities Protection Act, 1893* (56 & 57 Vict. c. 61), s. 1.

Certain trustees had, under a scheme made in pursuance of the Municipal Corporations Act, 1883, the management of lands on the seashore, which formerly belonged to a corporation dissolved by that Act. With the alleged object of preserving their rights, they demolished and removed the materials of two bathing huts which had been placed on rollers on the shore by a fisherman for hire by visitors.

The fisherman brought an action in the county court against the secretary of the trustees claiming damages for assault, trespass, conversion and detainee, but did not commence the action within six months after the demolition and removal of the materials of the buildings. The deft. pleaded the Public Authorities Protection Act, 1893, as a defence; and the learned county court judge having heard the opening of the plt.'s case, but without hearing any of the evidence tendered in support of it, non-suited him:—

*Held*, that the question whether the trustees acted maliciously and not bona fide in pursuance of any public authority might have arisen on the evidence, although not raised by the plt.'s particulars; that the removal of the materials of the buildings might have been proved to have given rise to a continuing claim; and therefore that, on the authority of *Fletcher v. London and North Western Ry. Co.* [1892] 1 Q. B. 122, the learned county court judge was wrong in withdrawing the case from the jury when he did without the plt.'s consent instead of hearing his evidence, and that there must be a new trial.

*Per* Scrutton J.: On the new trial the exact nature of the public duty alleged by the deft. would have to be considered. And query whether the statute applies to cases where the substantial issue is the recovery of land or the title to land. *CROSS v. RIX* - Div. Ct. 11 L. G. R. 151; 77 J. P. 84; 29 T. L. R. 85

**COUNTY COURT (Non-suit)—continued.**

— Refusal of judge to non-suit.

See above EVIDENCE.

**Pleading.**

*Promissory note—Payable at a particular place—Pleading.*

In an action on a promissory note in the county court the deft. wished to take the point that the note was payable at a particular place and that it had not been duly presented for payment. The county court judge held that this was a statutory defence and that, as no notice had been given of it, the deft. could not take the point:—

*Held*, that by virtue of s. 87 of the Bills of Exchange Act, 1882, due presentment for payment was of the essence of the plt.'s cause of action, and so was not a statutory defence of which the deft. need give notice. *PRITCHARD v. COUCH AND OTHERS*

Div. Ct. 57 S. J. 342

**Postponement of Trial.**

"Good cause"—*Pendency of action in High Court raising similar issue—County Court Rules, 1903 and 1904, Order XII. r. 16.*

Appeal by the plts. from an order made by the judge of the Southwark County Court.

The action, which was commenced on May 15, 1913, was brought to recover 61l. 15s. 10d., the balance of an account due to the plts. for the erection of a lift in certain premises at 64, Long Acre.

On May 21, 1913, the plts. were served by the deft.'s solicitors with notice of their intention to apply for an order that the trial of the action should stand over pending the hearing of an action which was being brought in the High Court against Jackson, the present deft., at the instance of the tenants of the premises at 64, Long Acre, in which the lift, the subject-matter of the action, was erected for damages in respect of the alleged faulty construction of the lift.

On May 22, 1913, the county court judge made an order that the trial of the action be adjourned until after the action pending in the High Court had been tried.

The plts. appealed.

The Court dismissed the appeal, holding that the pendency of the High Court action was "good cause" within Order XII. r. 16 of the County Court Rules, 1903 and 1904, for postponing the trial of the action. They, however, thought that in the circumstances the county court judge should not, in the exercise of his discretion, have made the order postponing the trial, and suggested that the matter should be reconsidered by him. *HAMMOND BROTHERS & CHAMPNESS, LD. v. JACKSON*

Div. Ct. [1913] W. N. 340

**Remitted Action.**

*Judge's refusal to hear—Order to hear—Costs—County Courts Act, 1888* (51 & 52 Vict. c. 43), s. 65.

An order was made by a Master of the Supreme Court under s. 65 of the County

**COUNTY COURT (Remitted Action)—continued.**

Courts Act, 1888, remitting an action to the Manchester County Court. That section authorizes the remitting of an action of the kind in question "to be tried in any Court in which the action might have been commenced, or in any Court convenient thereto." The action could not have been commenced in the Manchester County Court, and the judge refused to try the action on the ground that his Court was congested with local cases and that the case ought to have been remitted to Liverpool.

The Court made absolute a rule nisi to the judge to hear the action and ordered him to pay the costs of the rule. *REX. v. JUDGE MELLOR AND ROYAL LONDON, & CO., INSURANCE CO. Ex parte BICKERTON* - Div. Ct.

30 T. L. R. 22

*Order of Master remitting action of contract to county court—Original writ and order lodged with registrar of county court—Subsequent extension of time for appealing against Master's order by judge at chambers—Reversal of order by judge—Absence of jurisdiction in High Court after remittal of action to county court—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 65.*

Where an action in the High Court has been remitted to the county court under the County Courts Act, 1888, s. 65, and the original writ and the order remitting the action have been lodged with the registrar of the county court, there is no longer any jurisdiction in the High Court to entertain an appeal against the order remitting the action to the county court.

*Harris v. Judge* [1892] 2 Q. B. 565, and *Duke v. Davis* [1893] 2 Q. B. 107, 260, followed. *BUCKLEY & BEACH v. NATIONAL ELECTRIC THEATRES, LD.* - C. A. [1913] 2 K. B. 277; 82 L. J. (K. B.) 739; 108 L. T. 871; [1913] W. N. 103

**Removal to High Court.**

*Removal of action from county court to High Court—Discretion of High Court or judge thereof—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 126.*

By s. 126 of the County Courts Act, 1888, proceedings commenced in the county court may be removed into the High Court, if the High Court or a judge thereof "shall deem it desirable that the action or matter shall be tried in the High Court, and upon such terms as to payment of costs . . . as the High Court or a judge thereof shall think fit to impose" :—

*Held*, that the section is not confined to cases in which the action which is the subject of the application for removal is in itself more fit to be tried in the High Court than in the county court. The section gives an absolute discretion to the High Court to consider, having regard to all the circumstances, whether it is desirable that the action should be tried in the High Court or remain in the county court. *CHALLIS v. WATSON*

Div. Ct. [1913] 1 K. B. 547; 82 L. J. (K. B.)

529; 108 L. T. 505; [1913] W. N. 47;

29 T. L. R. 271; 57 S. J. 285

**COUNTY COURT—continued.****Stay of Proceedings.**

*See* ARBITRATION—Stay of Proceedings.

**Surrender of Tenancy.**

— Tenant remaining in possession—Execution—Claim by landlord for rent.

*See* LANDLORD AND TENANT—Tenancy.

**Workmen's Compensation.**

*See* WORKMEN'S COMPENSATION.

**COURT OF APPEAL.**

*See* APPEAL.

**COURT OF PROBATE ACT, 1857, ss. 75, 77, 78.**

*See* PROBATE.

**COURT OF RECORD—Railway and Canal Commission—Reference.**

*See* APPEAL—Railway and Canal Commission.

**COVENANT.**

*After-acquired Property. See* SETTLEMENT.

*Building Scheme, col. 134.*

*Husband and Wife. See* DIVORCE—Restitution of Conjugal Rights.

*Lease, col. 134.*

*Restrictive Covenants, col. 134.*

*Title. See* VENDOR AND PURCHASER.

*Vendor's Lien, col. 136.*

**After-acquired Property.**

— Covenant to settle.

*See* SETTLEMENT.

**Building Scheme.**

*See* below, Restrictive Covenants.

**Husband and Wife.**

— Deed of separation—Covenant not to sue for restitution of conjugal rights—Bankruptcy of husband—Arrears of allowance under deed proved for by wife—Discharge—Effect.

*See* DIVORCE—Restitution of Conjugal Rights.

**Lease.**

*See* ADMINISTRATION—Covenant and LANDLORD AND TENANT.

**Restrictive Covenants.**

*Building—Injunction—Alteration in character of district.*

In 1888, S., the owner of a considerable estate called the B. M. Estate, lying on the south side only of C. Road, conveyed to a building society three acres of the land bounded by C. Road on the north (below called the second S. Estate). The land was coloured pink on the plan on the conveyance, which divided it by lines into eighteen equal-sized plots having the odd numbers on the C. Road frontage and the even numbers on the south.



**COVENANT (Restrictive Covenants)—continued.**

The plan also shewed another piece of land coloured green, which belonged to S. but was not conveyed. The deed contained a covenant by the society against the erection or user of buildings on the second S. Estate other than as private dwelling-houses, professional premises, or lodging-houses. S. by the same deed entered into a similar restrictive covenant as regarded the land coloured green. Other parts of the B. M. Estate lying to the west and south-west of the second S. Estate (below called the first S. Estate) had been previously purchased by the society, which later on purchased other land forming part of the B. M. Estate, including the land coloured green (collectively called the third S. Estate).

In 1889 the society conveyed a plot on the second S. Estate (No. 11, facing north) and another plot (No. 12, facing south) to G., who in 1912 conveyed them both to the deft. The unsold portions of the B. M. Estate were in 1911 conveyed by the successor in title of S. to the plt.

In and for some time after 1888 C. Road was a quiet country road with a few houses on either side, and for some distance west of the second S. Estate, and along the whole frontage of that estate and of the land coloured green the district was purely residential. From 1888 onwards this character had been seriously altered. On the north side of C. Road there was an almost continuous line of shops opposite the second S. Estate, and C. Road itself had become the main shopping district of the place. Many shops had also been built on adjoining parts of the B. M. Estate which had formerly been subject to restrictive covenants, and the covenants in respect of several plots on the second S. Estate had not been enforced, with the result that private houses on them had been turned into shops. The plt. himself had erected shops on parts of his neighbouring land.

In 1912 the deft., being desirous of building shops on his plots, applied to the plt. for leave to do so. This was refused except on the terms of the deft. paying plt. 100%. On these terms being declined the plt. sued for an injunction to restrain the deft. from erecting the shops:—

*Held*, (1.) that as between S. and the society the conveyance provided for a building scheme; (2.) that the acts and omissions of the plt. and his predecessors in title, and particularly the non-enforcement of the covenant as to the building on parts of the second S. Estate, prevented the Court from enforcing the covenant; and (3.) that, if that was not enough, the Court was entitled also to take into account the general change in the character of the neighbourhood irrespective of the particular acts and omissions of the plt. and his predecessors in title.

Observations of James L.J. in *German v. Chapman* (1877) 7 Ch. D. 271, 279, and of Lindley L.J. in *Knight v. Simmonds* [1896] 2 Ch. 294, 297, 298, applied. *SPREY v. SAINSBURY* - - - *Sargent J.* [1913] 2 Ch. 513.

109 L. T. 393 57 S. J. 836

**COVENANT (Restrictive Covenants)—continued.**

*Covenant running with land—Ben-fit—“Negative easement”—Covenant enforceable in equity.*

Purchasers of land sold in plots for building in 1880 entered into restrictive covenants with the tenant for life of a settled estate, who had the legal estate therein, and the trustees, who had only a power of sale. There was no general building scheme applicable to the estate as a whole, but similar covenants were entered into by purchasers of property in the same road:—

*Held*, that the benefit of the covenant ran with the land in equity in the same manner as a negative easement, and that an adjoining owner was entitled to enforce the covenant against a purchaser and his tenant, although the original legal estate of the covenantee had ceased to exist.

*Rogers v. Hosegood* (1900) 2 Ch. 388, applied. *LONG AND OTHERS v. GRAY AND OTHERS* - - - - - 58 S. J. 46

*Restrictive covenants—Trade—Change in character of neighbourhood—Acquiescence—Fried fish shop.*

Purchasers of land laid out upon a building scheme in 1862 covenanted to observe certain stipulations, one of which prohibited any trade or manufacture from being carried on upon the estate. Subsequent purchasers of other land on the estate purchased with notice of and subject to this covenant. One of them had permitted four houses upon land purchased by him to be turned into shops:—

*Held*, that, in the circumstances, his executors were entitled to restrain a purchaser from him from carrying on the trade of a fried fish vendor on his premises, in breach of the original covenant.

To disentitle an owner to enforce a restrictive covenant it is not sufficient to establish a change in the character of the neighbourhood without positive evidence of personal acquiescence in the change on the part of the person seeking to enforce the covenant. *PULLEYNE AND OTHERS v. FRANCE AND ANOTHER* - C. A. 57 S. J. 173

**Title.**

—Conveyance—Damages.

*See VENDOR AND PURCHASER.*

**Vendor's Lien.**

*Covenant to maintain vendor—Purchaser for value with notice.*

A. assigned by deed to her son a dwelling-house and farm in consideration of natural love and affection, and of the covenants on the part of the son thereafter contained. The deed contained a covenant by the son, that he, his executors, administrators, or assigns, would maintain A. and her daughter during their lives, and permit them to occupy the dwelling-house:—

*Held*, that there was a lien on the lands for such maintenance which was binding as against a subsequent purchaser for value with notice.

*Richardson v. M'Cauleland* (1817) Beatty, 457, applied and followed. *KELAGHAN v. DALY* *Boyd J. (Ir.)* [1913] 2 I. R. 328

**CRIMINAL APPEAL ACT, 1907.**

See **CRIMINAL LAW—Appeal to C. C. A.**

**CRIMINAL LAW.**

*Accessory*, col. 138.  
*Accomplice*, col. 138.  
*Appeal to C. C. A.*, col. 138.  
*Attorney-General, Sanction of*. See below, **Larceny Act, 1901**.  
*Bankers' Books*. See **EVIDENCE**.  
*Betting*, col. 149.  
*Breaking and Entering*, col. 149.  
*Brothel*, col. 150.  
*Burglary*, col. 150.  
*Children, Carnal Knowledge of*, col. 150.  
*Children, Neglect of*, col. 150.  
*Company*. See **LONDON—Nuisance**.  
*Contempt of Court*. See **DIVORCE**.  
*Conversion*. See below, **Larceny**.  
*Criminal Law Amendment Act, 1885*, col. 152.  
*Cruelty to Animals*, col. 152.  
*Ecclesiastical Law*. See **ECCLIASTICAL LAW**.  
*Evidence*, col. 152.  
*Extradition*. See **EXTRADITION**.  
*False Pretences*, col. 158.  
*Forgery*, col. 159.  
*Fraud*, col. 159.  
*Fraudulent Conversion*. See below, **Larceny**.  
*Habitual Criminal*, col. 159.  
*Husband and Wife*, col. 161.  
*Imprisonment*. See below, **Sentence**.  
*Indictment*, col. 161.  
*Insanity*, col. 162.  
*Jury*, col. 163.  
*Larceny*, col. 163.  
*Larceny Act, 1901*, col. 163.  
*Libel*, col. 163.  
*Manslaughter*, col. 163.  
*Master and Servant*. See **NUISANCE**.  
*Miscarriage of Justice*. See above, **Appeal to C. C. A.**  
*Misdirection*. See above, **Appeal to C. C. A.**  
*Murder*, col. 164.  
*Official Secrets Act, 1911*, col. 165.  
*Penal Servitude*. See below, **Sentence**.  
*Perjury*, col. 165.  
*Procurator*, col. 165.  
*Prostitution*. See below, **Sentence**.  
*Punishment*. See below, **Sentence**.  
*Quarter Sessions*. See **JUSTICES**.

**CRIMINAL LAW—continued.**

*Receipt of Stolen Goods*, col. 166.  
*Recognizances*. See below, **Sentence**.  
*Sentence*, col. 166.  
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*Shooting with Intent to Resist Apprehension*. See above, **Appeal to C. C. A.**  
*Solicitation*. See above, **Evidence**.  
*Threat to Murder*, col. 169.  
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*Vagrancy*, col. 169.  
*Verdict*. See above, **Jury**.  
*Whipping*. See above, **Sentence**.  
**Accessory.**  
*Burglary*.  
 Mere knowledge that the principal intends to commit crime does not constitute an accessory before the fact: there must be some particular crime in view. **REX v. LOMAS (JOSEPH)** - C. C. A. 9 Cr. App. R. 226  
**Accomplice.**  
 See **Appeal to C. C. A.—Sentence**, and **Evidence**.  
**Appeal to Court of Criminal Appeal.**  
*Adjournment*, col. 138.  
*Constitution of Court*, col. 138.  
*Fresh Evidence*, col. 138.  
*Frivolous Appeals*, col. 139.  
*Leave to Appeal*, col. 139.  
*Miscarriage of Justice*, col. 140.  
*Misdirection*. See above, **Miscarriage of Justice**.  
*Right of Appeal*, col. 145.  
*Sentence*, col. 146.  
*Shorthand Notes*, col. 149.  
**Adjournment.**  
 The Court has a discretion in granting an adjournment on the ground of one of its members having been the judge at the trial. **REX v. SHARMAN (STEPHEN), alias SUTHERLAND (HENRY)** - C. C. A. 8 Cr. App. R. 130  
 Application for adjournment refused, where the object of the application was to consider whether fresh evidence should be called to raise a defence not set up at the trial. **REX v. MOLAREN (HUGH)**  
 C. C. A. 8 Cr. App. R. 10  
**Constitution of Court.**  
 There is no rule that the trial judge should not sit on the hearing of the appeal. **REX v. BENNETT (BERKELEY) AND NEWTON (ARTHUR)**  
 C. C. A. 9 Cr. App. R. 146  
 See above, **Adjournment**.  
**Fresh Evidence.**  
**Alien.**  
 If there is any uncertainty at the trial whether the appellant is an alien, the Court will hear evidence on the point. **REX v. COLLINS (JACK)** - C. C. A. 8 Cr. App. R. 244

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.***Identification.*

Conviction quashed in view of fresh evidence and of proof that the identification of appellant at the trial was not satisfactory.

For the purpose of identification the suspected person should not be presented alone. *REX v. WILLIAMS (GEORGE)* C. C. A. 8 Cr. App. R. 84

*Jury—Character of.*

The Court will not as a rule hear evidence as to the character of individual jurymen.

The Court will not set aside a verdict on questions of fact except on the strongest evidence. *REX v. HANCOX (ARTHUR FRED)* C. C. A. 8 Cr. App. R. 193; 29 T. L. R. 331

*Receipt of stolen goods.*

On the trial of an indictment for receiving stolen property, the evidence of possession by the accused must be clear. *REX v. FOREMAN (ERNEST)* C. C. A. 9 Cr. App. R. 216

*Witness requiring immunity.*

The Court will not give leave to call a witness who has made a confession exonerating an appellant but who declines to swear to the truth of it, unless he is guaranteed immunity for the crime.

The Court will not as a rule give leave to call a witness the nature of whose information is not disclosed.

Whether the Court will take notice of an objection that the trial judge declined to allow a witness to be treated as hostile, *quære*. *REX v. GORDON (GEORGE CHARLES) AND OTHERS* C. C. A. 8 Cr. App. R. 246

In a proper case the Court will adjourn the hearing of an application and permit the name of a prospective witness not to be mentioned in public, if it is duly supplied to the registrar. *REX v. GORDON (GEORGE CHARLES) AND OTHERS* C. C. A. 8 Cr. App. R. 237

*Witnesses that might have been called at the trial.*

The general rule that witnesses, who might have been called at the trial and were not, will not be called in the Court above will be enforced with strictness, when the defence is an alibi and appellant reserves his defence before the justices. *REX v. TREVARTHEN* C. C. A. 8 Cr. App. R. 97

*Frivolous Appeals.*

The Court will mark its disapprobation of frivolous appeals by disallowing the running of the sentence from the date of conviction. *REX v. BECKETT* C. C. A. 8 Cr. App. R. 204

*Leave to Appeal.*

Leave to appeal refused. *REX v. ENTWISTLE* C. C. A. 8 Cr. App. R. 93

When the Court is satisfied that a verdict was reasonable in view of the proved facts, it will not grant leave to appeal, because the judge did not direct the jury on the alleged absence of motive on deft.'s part or refer to his previous good character. *REX v. BROWNHILL* C. C. A. 8 Cr. App. R. 118; 20 T. L. R. 156

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.**

Leave to appeal granted after sentence served. *REX v. WILLIAMS (GEORGE)*

C. C. A. 8 Cr. App. R. 71

Leave to appeal granted on the ground that verdict was against the weight of evidence.

The Court has power to receive evidence on affidavit, but will not, as a rule, attach weight to such evidence, unless there was opportunity to cross-examine the deponent. *REX v. HANCOX (ARTHUR FRED)*

C. C. A. 8 Cr. App. R. 176

*Extension of time.*

In a proper case the Court will extend the time for making an application for leave to appeal. *REX v. HARTLEY (GEORGE)*

C. C. A. 9 Cr. App. R. 218

*Misdirection.*

The Court will grant leave to appeal, when it has prima facie reason to believe that the jury was misdirected. *REX v. LEARY (AUGUSTUS)* C. C. A. 9 Cr. App. R. 67

Though the Court is satisfied with a conviction, it may grant leave to appeal against sentence, if any point of law arises in relation thereto. *REX v. DINNICK (1909)* 3 Cr. App. R. 77, explained. *REX v. TRUEMAN (CLEMENT ROBERT)* C. C. A. 9 Cr. App. R. 20

*Miscarriage of Justice.**Evidence.**Evidence—Handwriting.*

The Court will not interfere with a conviction based upon the fact that handwriting is traced to the deft. without positive proof that that handwriting is not his.

In such a case the Court does not necessarily call in expert evidence. *REX v. TRELOAR (REGINALD)* C. C. A. 9 Cr. App. R. 1

Where there is some evidence to go to the jury, the Court will, if necessary, look at the depositions. *REX v. METCALFE (GEORGE)*

C. C. A. Cr. 9 App. R. 7

*Evidence—Admission of fact of previous conviction—Slight case against prisoner—Effect on jury.*

*REX v. HEMINGWAY* 8 Cr. App. R. 47; 77 J. P. 15; 29 T. L. R. 13

*Evidence — Previous conviction wrongly admitted.*

See below, Misdirection—Misstatement of fact.

*Evidence improperly admitted.*

If substantial evidence against the defendant has been improperly admitted, the Court will quash the conviction. *REX v. CAMPBELL*

C. C. A. 8 Cr. App. R. 75; 77 J. P. 95

When corroboration of prosecutor's evidence is very weak and, after conviction, doubt has been thrown on that evidence, the Court may quash the conviction. *REX v. BAKER (GEORGE)*

C. C. A. 8 Cr. App. R. 136

*Findings of fact.*

The Court will not set aside a jury's find-

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.**

ing of fact except on the strongest grounds.  
**REX v. BROWNHILL (ARCHIBALD)**

C. C. A. 8 Cr. App. R. 258

*Habitual criminal.*

Inadmissible evidence of convictions and other charges or other irregularities at the trial which may influence the verdict are not within the proviso to s. 4, sub-s. 1, of the Criminal Appeal Act, 1907, as they may lead to a "substantial miscarriage of justice." **REX v. FOWLER (GEORGE)** - C. C. A. 8 Cr. App. R. 240;

77 J. F. 379; 29 T. L. R. 422

*Evidence given not included in notice to prisoner—No miscarriage of justice.*

Where there is no miscarriage of justice, the Court may disregard the admission of evidence of "other grounds" of which notice ought to have been given to a person charged with being a habitual criminal. **REX v. WESTWOOD (FREDERICK)** - C. C. A. 8 Cr. App. R. 273; 29 T. L. R. 492

The statutory notice to an offender under s. 10, subs. 4 (b), of the Prevention of Crime Act, 1908, is subject to the proviso to s. 4, sub-s. 1, of the Criminal Appeal Act, 1907.

The headnote to *REX v. Fowler* (1913) 8 Cr. App. R. 240, is too widely stated. **REX v. HERON (STEPHEN)** - C. C. A. 9 Cr. App. R. 29

See below, *Habitual Criminal*.

*Misdirection.**Attempt.*

On an indictment charging an attempt to commit a crime it may be a misdirection not to distinguish an attempt in law from an intention or a threat. **REX v. LANDOW (MARKS)**

C. C. A. 8 Cr. App. R. 218; 23 Cox. C. C. 457; 109 L. T. 48; 77 J. P. 364; 29 T. L. R. 375

On a charge of conspiracy it is misdirection to discuss the case of each defendant separately without reference to the alleged concert. **REX v. BAILEY (JOHN HINTON), AND UNDERWOOD (HARRY THOMAS)** - C. C. A. 8 Cr. App. R. 94

*False Pretences.*

On an indictment for obtaining money by false pretences it is essential that the jury should understand that there should be no conviction without an intent to defraud, and, unless such intent is clear from the facts, they should be directed on the point; they should also be directed that the obtaining must be due to the false pretence alleged. **REX v. FERGUSON (MORRIS)** - C. C. A. 8 Cr. App. R. 113

*False Pretences — Evidence — Leading Questions.*

If the Court considers that the deft.'s case was not fully put to the jury, it may quash a conviction.

Evidence obtained in answer to leading questions may invalidate a conviction. **REX v. WILSON (RAY), alias WHITTINGDALE**

C. C. A. 8 Cr. App. R. 124

*Husband and Wife.*

*Married woman—Felony committed in her husband's presence—Presumption of coercion—*

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.**

*Fact of marriage not disclosed till after conviction — Whether too late to claim benefit of presumption.*

The appellant, Mary Ann Green, was indicted at the Middlesex Sessions with one Thomas Russell for stealing two suits of clothes in a shop. One of the suits was stolen by Green in Russell's presence. Both the prisoners were convicted. After conviction Russell stated in court that the woman Green was his wife, but not apparently with the object of claiming for her the benefit of the presumption that in stealing the suit she was acting under his coercion. The chairman disregarded the statement and sentenced both prisoners.

Green appealed to the C. C. A. on the ground that she never saw the suit till it was produced at the police court. There was nothing in her notice of appeal as to the presumption of coercion.

It was conceded, on the part of the Crown, that Russell and Green were in fact man and wife, but it was contended that, as the presumption was rebuttable, the question whether under the circumstances of the case she acted under Russell's coercion was one for the jury, and therefore it was too late to take the point for the first time before the C. A.

The Court held that the benefit of the presumption might be claimed after verdict, and that the Court were bound to give effect to it. **REX v. GREEN** - C. C. A. [1913] W. N. 356; 30 T. L. R. 170

*Indecent assault — Consent — Direction to jury.*

**REX v. MAY** - C. C. A. [1912] 3 K. B. 572; 82 L. J. (K. B.) 1; 8 Cr. App. R. 63; 23 Cox. C. C. 327; 108 L. T. 351; [1912] W. N. 242; 77 J. P. 31; 29 T. L. R. 24

*Insufficient direction.*

Omission to direct as to a material point. **REX v. WANN** - C. C. A. 7 Cr. App. R. 135; 23 Cox. C. C. 183; 107 L. T. 462; 76 J. P. 269; 28 T. L. R. 240

*Larceny.*

On a charge of larceny, when the facts are compatible with an honest mistake on the deft.'s part, there must be a direction on intent to steal.

Where deft. has sold some of the goods alleged to be stolen by him, it may be necessary to direct the jury whether he intended to account to the owners for the proceeds. **REX v. STURGESS (CHARLES)**

C. C. A. 8 Cr. App. R. 120

*Larceny.*

On an indictment for larceny by a trick the jury must be specifically directed on the point whether there was an intention to pass the property.

Though the Court may agree with the verdict, it will quash a conviction, unless it is satisfied that, with a proper direction on the law, the jury must necessarily have arrived at it. **REX v. MILLIARD (ALFRED)**

C. C. A. 9 Cr. App. R. 171

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.***Misstatement of fact.*

Misstatements of fact in directing a jury may be a good ground for quashing a conviction. *REX v. HAGAN (GEORGE), alias SMITH (WILLIAM)* - C. C. A. 9 Cr. App. R. 25

It is misdirection, for which a conviction will be quashed, to assume wrongly the admission of a previous conviction, and to declare that an alibi is unsatisfactory, when it is not in fact so proved.

When there is a multiplicity of counts in an indictment, the Court of trial has a discretion as to putting the prosecution to election, and on this there is no appeal. *REX v. CURTIS (ERNEST)* C. C. A. 9 Cr. App. R. 9; 29 T. L. R. 102

*Murder—Evidence.*

A judge has no power to exclude evidence which he holds to be admissible. On a trial for murder there need not necessarily be a direction that it is open to the jury to find manslaughter. *REX v. FLETCHER (THOMAS)* C. C. A. 9 Cr. App. R. 53

On the trial of an indictment for murder, it is not a misdirection to call the jury's attention to the evidence that defendant threatened to kill the person in respect of whom he is charged, though it be proved that he was intoxicated at the time he made the threat.

Violent temper does not reduce homicide from murder to manslaughter, though words of provocation accompanied by such an act as spitting may do so. *REX v. MASON* - C. C. A. 8 Cr. App. R. 121

When a witness on a trial has varied the date of an event from that in his deposition, it is correct to direct the jury that it is clear that the event happened on one of the given dates, and that though they are not at liberty to assume the truth of the statements in the deposition without further evidence, yet they are entitled on the whole of the evidence at the trial to decide between the two dates.

The Court will not, as a rule, permit an appeal on the ground that the trial judge wrongly allowed a witness to be treated as "hostile." *REX v. WILLIAMS (JOHN)* C. C. A. 8 Cr. App. R. 133; 77 J. P. 240; 29 T. L. R. 188

*No Summing-up.*

In a simple case the judge is entitled to ask the jury whether they will dispense with the summing-up.

Sentence ought not to be increased, because deft. after conviction persists in asserting his innocence. *REX v. NEWMAN (ALBERT)* C. C. A. 8 Cr. App. R. 134

*Perjury.*

When on an indictment for perjury containing several assignments a general verdict of guilty is returned, though one assignment is clearly not proved by reason of the want of corroboration, the Court will quash the conviction.

The Court will not set aside a verdict, merely because the trial judge is dissatisfied with it. *REX v. GASKELL* - C. C. A. 8 Cr. App. R. 103; 77 J. P. 112; 29 T. L. R. 108

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.***Plea of guilty induced by misstatement of law by judge—Conviction quashed.*

*REX v. ALEXANDER* - C. C. A. 7 Cr. App. R. 110; 23 Cox, C. C. 138; 107 L. T. 240; 76 J. P. 213; 28 T. L. R. 200

*Receipt of stolen goods—Husband and wife—Receipt by wife—Acquiescence after knowledge—Receiving stolen goods.*

On a joint indictment for receiving stolen property, the evidence of the guilty knowledge of each defendant must be carefully distinguished in the summing-up.

Moses Pritchard, having been convicted and sentenced to a term of twelve months' imprisonment, appealed.

The Court allowed the appeal, holding that there was no evidence to establish any pre-concerted arrangement between the appellant and his wife so as to make him a party to her acts while he was away. Under a proper direction there might have been a question for the jury upon the facts in the case which seemed to shew that the appellant, on returning and becoming aware that the goods had been stolen, and were actually in his possession or under his control, had taken steps to prevent the police from discovering them. Those facts might be evidence warranting a jury, if properly directed, in finding the appellant guilty of receiving. But the direction of the chairman was contrary to the law laid down in *Reg. v. Dring* (1857) Dearsly & Bell, 329. In his summing-up he had treated man and wife as one and the same person, and had made the husband liable for all that was done by the wife. The question whether the appellant had received the goods had been taken out of the hands of the jury. The conviction therefore could not be supported and must be quashed. *REX v. PRITCHARD (MOSES) AND PRITCHARD (MARY JANE)* - C. C. A. 9 Cr. App. R. 210; [1913] W. N. 338

On an indictment for felonious receiving, the question whether defendant was in possession is for the jury and not for the judge. *REX v. LEARY (AUGUSTUS)* C. C. A. 8 Cr. App. R. 85

If, on an indictment for receiving stolen property, the Court thinks there was evidence from which the jury might infer guilty possession, it will not quash a conviction, though there was not (as there should have been) a direction on the point to the jury. *REX v. COOK* C. C. A. 8 Cr. App. R. 91

On an indictment for receiving stolen property, if there is evidence that it was found in deft's possession, the jury must be carefully directed on the question whether he had any knowledge where it was. *REX v. HIGGIN-BOTTOM* - C. C. A. 8 Cr. App. R. 79

*REX v. WHITE* - C. C. A. 7 Cr. App. R. 266; 23 Cox, C. C. 190; 107 L. T. 528

*REX v. FLATMAN (ARTHUR)*

C. C. A. 8 Cr. App. R. 256

*Shooting with intent to resist apprehension—Onus of proof—Intent—Accident.*

**CRIMINAL LAW** (Appeal to Court of Criminal Appeal)—*continued.*

Where intent is an ingredient of a crime, there is no onus on deft. to prove that the act alleged was accidental. *REX v. DAVIES WILLIAM*) - C. C. A. 8 Cr. App. R. 211; 29 T. L. R. 350

*Slight discrepancy between evidence of witness at the trial and at the coroner's inquisition—dictation assumed.*

An omission by the judge to call attention to a slight discrepancy between a witness's evidence at the trial and that at the coroner's inquisition is not misdirection. *REX v. BEAL* C. C. A. 8 Cr. App. R. 95

*Suggestion.*

It is not a misdirection to make a suggestion as to the facts of a case different to that made by the prosecution and by the defence. *REX v. BENTLEY (MARY ELIZABETH)*

C. C. A. 8 Cr. App. R. 109

A judge is entitled to make an independent suggestion on the facts not made by the prosecution or the defence. *REX v. RYDER (JAMES)*

C. C. A. 8 Cr. App. R. 100

*Verdict.**Murder.*

When, on a trial for murder, a judge has recommended a verdict of manslaughter on finding of not guilty of murder, the Court may ask the jury whether they find manslaughter. *REX v. BAXTER (JEANNIE)*

C. C. A. 9 Cr. App. R. 60

*Recommendation to mercy.*

The C. C. A. is not entitled to express an opinion on a jury's recommendation to mercy. *REX v. HARPER* - C. C. A. 9 Cr. App. R. 41

*Wrong entry.*

Where the Court of trial, under a mistake of law, enters a verdict of guilty, when it should have entered one of not guilty, the Court will not apply the proviso to s. 4 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), though it is satisfied that the former verdict was correct. *REX v. JOHNSON (MARY)*

C. C. A. 9 Cr. App. R. 57

*Misdirection.*

See above, *Miscarriage of Justice.*

*Right of Appeal.*

Whether under s. 3 of 7 Edw. 7, c. 23, the Criminal Appeal Act, 1907, there is an appeal against conviction for breach of a recognisance, *quære*. *REX v. CALLAGHAN (JOSEPH)*

C. C. A. 8 Cr. App. R. 185

*Conviction—"Guilty, but insane"—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3.*

The C. C. A. is bound by previous decisions to hold that where the jury has returned a verdict of "Guilty, but insane," the right of appeal against conviction for breach of a recognisance, *quære*. *REX v. FALSTEAD*

C. C. A. 30 T. L. R. 143

**CRIMINAL LAW** (Appeal to Court of Criminal Appeal)—*continued.**Sentence.**Accomplice.*

An accomplice who gives evidence against his co-prisoners may be entitled to a mitigation of sentence.

When a sentence is altered, it runs from the date of conviction. *REX v. SHARMAN (ARTHUR JAMES)* - C. C. A. 9 Cr. App. R. 142

*Alien.**Expulsion—Variation of Sentence.*

*REX v. GRUNSPAN (SYDNEY)* - C. C. A. 8 Cr. App. R. 269

*Order recommending deportation quashed—Recommendation for expulsion—Married woman—Child living with woman.*

In this case the appellant, who had been convicted of receiving, was sentenced to two months' imprisonment in the second division and recommended for expulsion at the termination of that sentence. She now appealed against that part of the sentence recommending her expulsion. The appellant was an alien; she stated she was a married woman, but on this point the Court expressed doubt; she had a child living with her.

In these circumstances the Court, pointing out that if the appellant were married, the sentence, as it stood, was equivalent to a decree of divorce, reversed that part of the sentence recommending the appellant for expulsion. The appellant had been in prison for a month, and the Court made no order that the sentence should run from conviction.

*Quære*, whether a married woman living with her husband can or should be recommended for expulsion. *REX v. FINE* - C. C. A. 8 Cr. App. R. 78; 77 J. P. 79; 29 T. L. R. 61

*Reduction.**Sentence not Reduced.*

*REX v. STEVENS (GEORGE)* - C. C. A. 8 Cr. App. R. 182

*Penal servitude for first offence.*

A sentence of penal servitude for a first offence is sometimes justified.

The First Offenders Act is not intended for the benefit of persons who have for some time led a life of crime without being found out. *REX v. CHANDLER* - C. C. A. 8 Cr. App. R. 82

In determining sentence it is proper to consider, on the one hand, the social position of the offender, and on the other that the offence may be aggravated by reason of such position. *REX v. CARGILL (EDWARD B.)*

C. C. A. 8 Cr. App. R. 224

*Habitual criminal—Preventive detention—Length of sentence—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10.*

The appellant was convicted of burglary, and also of being a habitual criminal. He was sentenced to three years' penal servitude and ten years' preventive detention. He ap-

# CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.

pealed against the latter portion of the sentence:—

*Held*, that there was no rule that in the absence of special circumstances the proper period of detention was either five years or ten, but that the judge in each case must exercise his discretion upon the particular facts before him, bearing in mind that the object of detention, though in part punitive, was mainly reformatory, that the discipline which it imposed was, as appeared from rules made under the Act, of a much milder nature than that of imprisonment, and that by conduct evidencing reformation the prisoner might obtain his release long before the expiry of the period for which he was ordered to be detained. In the case before them they declined to interfere with the discretion of the judge and dismissed the appeal. *REX v. CROWLEY* - C. C. A. [1913] W. N. 3274 9 Cr. App. R. 198; 30 T. L. R. 9;

## Reduction.

### Sentence Reduced.

- REX v. ALDEN* - C. C. A. 8 Cr. App. R. 175
- REX v. BAUMGARTEN (LEWIS)* - C. C. A. 9 Cr. App. R. 212
- REX v. BROCKLESS (ERNEST)* - C. C. A. 8 Cr. App. R. 121
- REX v. BRUCE* - C. C. A. 9 Cr. App. R. 168
- REX v. CAILES (ERNEST)* - C. C. A. 9 Cr. App. R. 44
- REX v. CONNOR (JAMES)* - C. C. A. 9 Cr. App. R. 183
- REX v. DICKINSON* C. C. A. 9 Cr. App. R. 215
- REX v. EVERITT (LILY)* - C. C. A. 8 Cr. App. R. 156
- REX v. FIDLER (OSCAR)* - C. C. A. 9 Cr. App. R. 197
- REX v. HANNAY (CHARLES)* - C. C. A. 8 Cr. App. R. 122
- REX v. HARRISON (ARTHUR)* - C. C. A. 9 Cr. App. R. 145; 30 T. L. R. 1
- REX v. HOOPER AND HARDY* - C. C. A. 9 Cr. App. R. 5
- REX v. KEATS (THOMAS)* - C. C. A. 9 Cr. App. R. 214
- REX v. LEE (ALFRED)* - C. C. A. 9 Cr. App. R. 144
- REX v. MCKONE (JOHN)* - C. C. A. 9 Cr. App. R. 181
- REX v. MARCH (HENRY)* - C. C. A. 9 Cr. App. R. 214
- REX v. NEVELL (FRANK)* - C. C. A. 8 Cr. App. R. 158
- REX v. NEWMAN (ALBERT)* - C. C. A. 8 Cr. App. R. 134
- REX v. PORTER (ALBERT)* - C. C. A. 9 Cr. App. R. 213
- REX v. SANDERS (CHARLES)* - C. C. A. 9 Cr. App. R. 179

# CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.

- REX v. SAUNDERS (WILLIAM THOMAS)* C. C. A. 8 Cr. App. R. 119
- REX v. SIMMONDS (GEORGE)* - C. C. A. 9 Cr. App. R. 51
- REX v. SINSEN (ALFRED)* - C. C. A. 9 Cr. App. R. 43
- REX v. SYKES (THOMAS)* - C. C. A. 8 Cr. App. R. 113
- REX v. WILSON (ALFRED)* - C. C. A. 9 Cr. App. R. 32

## Consecutive Sentence.

Consecutive sentences should be imposed sparingly. *REX v. CLARKE (SAMUEL EDWARD)* C. C. A. 8 Cr. App. R. 116

*Feeblemindedness—Severity of sentence mitigated in view of feeblemindedness of appellant.*

- REX v. MCQUEEN* C. C. A. 8 Cr. App. R. 89

## Manslaughter.

The criminality of negligence leading to manslaughter may be mitigated by the negligence of the deceased. *REX v. STUBBS (SYDNEY)*

- C. C. A. 8 Cr. App. R. 238; 29 T. L. R. 421

## Misapprehension of effects of sentence.

- REX v. SMITH (JAMES HENRY)* - C. C. A. 8 Cr. App. R. 117

## Preventive detention.

- REX v. HAMILTON (HERBERT)* - C. C. A. 8 Cr. App. R. 89

## Penal servitude—First conviction.

- REX v. TRENHOLM (WILLIAM)* - C. C. A. 9 Cr. App. R. 18; sub nom. *REX v. TREWHOLM* - 77 J. P. 344; 29 T. L. R. 530

The Court discourages sentences of penal servitude for thefts of goods of small value, even where the prisoner has been previously convicted. *REX v. MARTIN (JOHN)*

- C. C. A. 9 Cr. App. R. 168
- REX v. LEE (ALFRED)* - C. C. A. 30 T. L. R. 1

## Previous convictions—Statements in calendar.

The appellant was convicted of larceny. He had been previously convicted, but the convictions were not formally proved. The Recorder, addressing him, said, "You have a long list against you," and the appellant replied, "Yes, sir":—

*Held*, that the way in which the appellant was treated with regard to his previous convictions was irregular, and that the sentence imposed upon him should be reduced.

*Per* Avory J.: The admission that there was a long list against the appellant was not an admission by him that the list was true. The habit of acting on statements appearing in the calendar is irregular. *REX v. METCALFE (GEORGE)* - C. C. A. 29 T. L. R. 512

Evidence of convictions and offences not strictly proved nor admitted must not be taken into account in sentence. *REX v. PALMER (WILLIAM)* - C. C. A. 8 Cr. App. R. 245

**CRIMINAL LAW (Appeal to Court of Criminal Appeal)—continued.**

As a rule penal servitude should not be inflicted after previous convictions, unless the offence has been committed soon after release from prison. *REX v. CONNOR (THOMAS)*

C. C. A. 8 Cr. App. R. 131

**Statement as to other Offences.**

Sentence reduced, because a statement was made by a police officer as to offences supposed to have been committed by the prisoner but which were not admitted by him and ought not to have been taken into account. *REX v. BROOKS*

C. C. A. 8 Cr. App. R. 111;

29 T. L. R. 152

**Recognizance.**

See below—Sentence.

**Variation.**

Rectification of sentence passed under a mistake of fact. *REX v. BURKE (KENNETH)*

C. C. A. 9 Cr. App. R. 222

See also below, Sentence.

**Shorthand Notes.**

*Appeal—Appeal dismissed—Application of ex-appellant for transcript of shorthand notes—Petition to Home Secretary.*

The C. C. A. has no power under rule 39c of the Criminal Appeal Rules, 1908, to order a transcript of the shorthand notes taken at the trial to be furnished to a person whose appeal has been dismissed and who has served his sentence. *Ex parte WEIR*

C. C. A. 23 Cox, C. C. 326; 108 L. T. 350;

77 J. P. 56

**Attorney-General, Sanction of.**

See below, Larceny Act, 1901.

**Bankers' Books.**

See EVIDENCE.

**Betting.****Using premises for.**

Localisation, for the purposes of the Betting House Act, 1853 (16 & 17 Vict. c. 119) is a question of fact for the jury. *REX v. FISHER (DANIEL) AND OTHERS*

C. C. A. 9 Cr. App. R. 164

**Breaking and Entering.****Knowledge of owner of premises.**

The appellant suggested to a servant of the prosecutrix a plan for the commission of a robbery by the appellant at the shop of the prosecutrix. The servant, pretending to agree to the appellant's suggestion, lent the keys of the shop to the appellant, who made duplicate keys, with one of which, on a day arranged with the servant, the appellant unlocked a padlock attached to the outer door and entered the shop, where he was arrested. The prosecutrix had been informed by the servant of the appellant's plan and knew that he intended to enter the shop on the day in question.

The appellant was convicted on an indictment which charged him with having broken and entered the shop with intent to steal therein:—

**CRIMINAL LAW (Breaking and Entering)—continued.**

*Held*, that the conviction was right, notwithstanding that the prosecutrix knew that the appellant had been supplied with the means of breaking and entering by her servant.

*Reg. v. Johnson* (1841) Car. & M. 218, distinguished. *REX v. CHANDLER* C. C. A. [1913] 1 K. B. 125; 82 L. J. (K. B.) 106; 77 J. P. 80; 8 Cr. App. R. 82; 23 Cox, C. C. 330; 108 L. T. 352; [1912] W. N. 276; 29 T. L. R. 83; 57 S. J. 160

See below, Evidence—Relevancy.

**Brothel.**

*Managing—Use of premises by one woman only for purposes of prostitution—Liability for "keeping or managing"—(Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13, sub-s. 1.*

The respondent was summoned under s. 13, sub-s. 1, of the Criminal Law Amendment Act, 1885, for managing a brothel. It was proved that the respondent's husband was the occupier of certain premises where he and his wife (the respondent) lived. A sister of the respondent, who was also living at the same premises, was a prostitute, and frequently took different men to the premises for purposes of prostitution, and the respondent on several occasions admitted her at night, when accompanied by a man, and knew for what purpose her sister was using the premises. No other woman used the premises for the purposes of prostitution. The magistrate, considering himself bound by the authority of *Singleton v. Ellison* [1895] 1 Q. B. 607, dismissed the information:—

*Held* by Pickford and Avory JJ., Ridley J. dissenting, on the authority of *Singleton v. Ellison* (ubi sup.), that as only one woman was using the premises for the purposes of prostitution, the premises were not a "brothel," and therefore the respondent could not be convicted of managing a brothel, and the information was properly dismissed. *CALDWELL v. LEECH*

Div. Ct. 109 L. T. 188; 77 J. P. 254; 29 T. L. R. 457

**Burglary.**

See above, Breaking and Entering, and below, Evidence—Relevancy.

**Children, Carnal Knowledge of.**

*Causing or encouraging—Girl under age of sixteen years—Knowingly allowing—Children Act, 1908 (8 Edw. 7, c. 67), s. 17—Children Act (1908) Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 25), s. 1.*

The appellant was charged under s. 17, sub-s. 1, of the Children Act, 1908, as amended by s. 1 of the Children Act (1908) Amendment Act, 1910, with causing or encouraging the unlawful carnal knowledge of his daughter, a girl under the age of sixteen years. He was an engine driver, and was obliged to be away from home at night for a fortnight in every four weeks. He was the father of three girls, the youngest being under the age of sixteen years. His wife, the step-mother of the girls, was addicted to drunkenness. When the



**CRIMINAL LAW (Children, Carnal Knowledge of)—continued.**

appellant was on duty by day, the girls were at home by half-past nine at night. When he was on duty at night, the girls were allowed to be out after half-past nine at night and to consort with persons of known immoral character. The appellant and his wife were repeatedly warned to exercise more control over the girls. The eldest girl was seduced, and, after being removed to a home where she was delivered of a child, was allowed to return with her child to her father's home. In Jan. or Feb., 1913, the youngest girl was seduced and became pregnant. In Aug., 1913, she was removed to a home. On one occasion, in June, 1913, the appellant, seeing the youngest girl passing the door of his house after half-past nine at night talking to a man, had ordered her indoors, and reproved her for her conduct; and on other occasions he had remonstrated with her and had told her that if she did not behave herself properly, she would be sent from home. There was no evidence that he knew she was having immoral intercourse with men.

The appellant having been convicted of an offence under s. 17 of the Act of 1903, as amended by s. 1 of the Act of 1910, appealed against the conviction.

The Court held that there was no evidence fit to be left to the jury that the appellant had knowingly allowed the girl to consort with persons of known immoral character within the meaning of s. 17, sub-s. 2, of the Act of 1908. Appeal allowed. *REX v. CHAINEY (ALFRED)* - C. C. A. [1913] W. N. 318; [1914] 1 K. B. 137; 9 Cr. App. R. 175; 30 T. L. R. 41

*Children Act, 1908 (8 Edw. 7, c. 67), s. 17.*

Not to prevent carnal knowledge taking place may, in certain conditions, be "causing" or "encouraging" it within s. 17, sub-s. 2, of the Children Act, 1908. *REX v. RALPHS (JAMES)* 9 Cr. App. R. 86

**Children—Wilful Neglect.**

*Refusal to allow operation—Children Act, 1908 (8 Edw. 7, c. 67), s. 12, sub-s. 1.*

On a prosecution under s. 12, sub-s. 1, of the Children Act, 1908, though the refusal to allow an operation is not necessarily such a refusal to provide medical aid as to amount to wilful neglect within the section, yet the justices must, in deciding whether there has been wilful neglect, consider in each case the nature of the operation and the reasonableness of the refusal to have it performed. *OAKEY v. JACKSON* - Div. Ct. 30 T. L. R. 92; [1914] 1 K. B. 216

See below, **Evidence—Relevancy.**

**Company.**

— Indictment.

See **LONDON—Nuisance.**

**Contempt of Court.**

— Committal—Appeal.

See **DIVORCE.**

**CRIMINAL LAW—continued.****Conversion.**

See below, **Larceny.**

**Criminal Law Amendment Act, 1885.**

See above, **Appeal to C. C. A.—Sentence,** and below, **Evidence—Relevancy.**

**Cruelty to Animals.**

*Carrying by rail—Cows—Infirmity—Unnecessary suffering—Permitting to be carried—Person in charge—Railway company—Animals (Transit and General) Order, 1912, cl. 12.*

A ry. co. to which cows are delivered for transit, and which conveys them by rail, does not "permit them to be carried," and is not "the person in charge" of them, within the meaning of cl. 12 of the Animals (Transit and General) Order, 1912, made under the Diseases of Animals Act, 1894, and is not liable to be convicted of "carrying" them when owing to infirmity and fatigue they cannot be carried without unnecessary suffering. *NORTH STAFFORDSHIRE RY. CO. v. WATERS*

Div. Ct. 30 T. L. R. 121

*Cow—Overstocking—Custom before sale—Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), s. 1, sub-s. 1.*

Where unnecessary suffering is caused to an animal by the owner, an offence is committed against s. 1, sub-s. 1, of the Protection of Animals Act, 1911, even if the act is done in pursuance of a custom and for commercial reasons.

The respondent held liable for allowing a cow to be overstocked with milk before offering her for sale. *WATERS v. BRAITHWAITE*

Div. Ct. 30 T. L. R. 107

**Ecclesiastical Law.**

See **ECCLESIASTICAL LAW.**

**Evidence.**

*Accomplice, col. 153.*

*Accused Person, Statements by, or in Presence of, col. 153.*

*Bankers' Books. See EVIDENCE—Bankers' Books.*

*Collateral Facts. See below, Relevancy.*

*Corroboration, col. 153.*

*Cross-examination, col. 154.*

*Deceased Person, Statements by, col. 154.*

*Depositions. See below, Relevancy.*

*Ecclesiastical Law. See ECCLESIASTICAL LAW.*

*Expert, col. 155.*

*Fresh Evidence. See above, Appeal to C. C. A.*

*Habitual Criminal, col. 155.*

*Husband and Wife, col. 155.*

*Insanity, col. 155.*

**CRIMINAL LAW (Evidence)—continued.***Relevancy, col. 155.**Solicitation, col. 158.**Unlawful Carnal Knowledge. See above, Relevancy.**Accomplice.*

The rule as to the corroboration of the evidence of accomplices applies to female witnesses who may be liable to prosecution under the Incest Act, 1908.

Where such corroboration exists, the evidence of such a witness of other incestuous acts between the same parties (not charged in the indictment) is, on the authority of *Rex v. Ball* [1911] A. C. 47, admissible, but if such evidence is uncorroborated, the jury should be warned against it. *REX v. BLOODWORTH (THOMAS HENRY)* - C. C. A. 8 Cr. App. R. 80

*Accused Person, Statements by, or in Presence of.*

*Inquiry by constable—Reply—No caution—No intention to arrest—Admissibility.*

Statements made by an accused person to a constable in reply to an inquiry are not inadmissible on the ground that the constable did not previously caution him, provided that the constable did not, before making the inquiry, make up his mind to take the person into custody or to take proceedings against him. *LEWIS v. HARRIS*

Div. Ct. 30 T. L. R. 109; 58 S. J. 156

*Statement by co-defendant.*

A statement by a deft. implicating himself and a co-deft. is not evidence against the latter. *REX v. DAVIS (JAMES)*

C. C. A. 9 Cr. App. R. 66

*Statements made in presence of accused person.*

The principle in *Norton's Case*, [1910] 2 K. B. 496, applies whether the maker of a statement, put in evidence as "hearsay," is called or not. *REX v. CHRISTIE (ALBERT)*

C. C. A. 9 Cr. App. R. 169

An implicating statement, the contents of which are not evidence against a defendant, may be put in as evidence of his demeanour on hearing it. *REX v. FIRTH (HARRY)*

C. C. A. 8 Cr. App. R. 162

*Bankers' Books.*

— Libel—Inspection.

*See EVIDENCE—Bankers' Books.**Collateral Facts.**See below, Relevancy.**Corroboration.**Child.*

A jury should be warned against the danger of accepting the uncorroborated evidence of a child of tender years. *REX v. PITTS*

C. C. A. 8 Cr. App. R. 126

*Confession.*

A confession properly proved in law needs no corroboration to found a conviction, although in practice there is invariably some corroboration. *REX v. SYKES (WALTER)*

C. C. A. 8 Cr. App. R. 233

**CRIMINAL LAW (Evidence)—continued.***Wife of accomplice—Larceny and receiving.*

A strong caution should be addressed to the jury as to the reception of the evidence of the wife of an accomplice.

*Rex v. Neal & Taylor* (1835) 7 C. & P. 168, commented on.

Whether the evidence of an accomplice's spouse is ever good corroboration, *quære*. *REX v. PAYNE (CHARLES)* - C. C. A. 8 Cr. App. R. 171; [1913] W. N. 38; 29 T. L. R. 25

*Cross-examination.*

*Accused as witness—Questions as to previous conviction—Imputations on characters of witnesses for prosecution—Criminal Evidence Act, 1898* (61 & 62 Vict. c. 36), s. 1.

*REX v. HUDSON* - C. C. A. [1912] 2 K. B. 464; 81 L. J. (K. B.) 861; 7 Cr. App. R. 256; 23 Cox. C. C. 61; 107 L. T. 31; [1912] W. N. 164; 76 J. P. 421; 28 T. L. R. 459; 56 S. J. 574

*REX v. WESTFALL* - C. C. A. 7 Cr. App. R. 176; 23 Cox. C. C. 185; 107 L. T. 463; 76 J. P. 335; 28 T. L. R. 207

*Cross-examination of witness as to contents of document.*

A witness cross-examined as to the contents of a document may put it in, not as evidence of the truth thereof, but to prove that his testimony at the trial was not an afterthought.

*Reg. v. Coll* (1889) 24 L. R. Ir. 522, followed. *REX v. BENJAMIN (ARTHUR)*

C. C. A. 8 Cr. App. R. 146

*Discretion of judge.*

The trial judge has a discretion, with which the Court is slow to interfere, whether he will allow cross-examination as to character under s. 1 (f) (ii.) of the Criminal Evidence Act, 1898.

*Rex v. Hudson* [1912] 2 K. B. 464.

Whether evidence consistent both with the story of an accomplice-witness and of deft. is corroboration of the former, *quære*. *REX v. WATSON (DAVID)* - C. C. A. 8 Cr. App. R. 249; 109 L. T. 335; 29 T. L. R. 450

*Deceased Person, Statements by.*

*Charges of illegal operation upon a woman—Statements made by deceased woman before and after miscarriage—Admissibility as evidence for defence.*

*REX v. THOMSON* - C. C. A. [1912] 3 K. B. 19; 81 L. J. (K. B.) 892; 23 Cox. C. C.; 107 L. T. 464; 7 Cr. App. R. 276; 28 T. L. R. 478

*Depositions.**See below, Relevancy.**Ecclesiastical Law.*

— Criminal suit under Clergy Discipline Act, 1892—Appeal in matter of law—Immoral act.

*See ECCLESIASTICAL LAW.*

**CRIMINAL LAW (Evidence)—continued.***Expert.*

The opinion of a person not an expert on the value of a thing may be given in evidence.  
**REX v. BECKETT**

**C. C. A. 8 Cr. App. R. 204 ; 29 T. L. R. 332**

*Fresh Evidence.*

See above, **Appeal to C. C. A.**

*Habitual Criminal.*

See above, **Appeal to C. C. A.—Evidence, and below, Habitual Criminal.**

*Husband and Wife.*

*Presumption that wife is acting under coercion of husband.*

**REX v. CAROUBI (HADJIAH) - C. C. A.  
 7 Cr. App. R. 149 ; 23 Cox, C. C. 177 ; 101  
 L. T. 415 ; 76 J. P. 282 ; 28 T. L. R. 248**

See above, **Appeal to C. C. A.—Mis-  
 carriage of Justice.**

*Insanity.**Murder.*

Evidence of the condition of the prisoner's mind should not be called as part of the case for the Crown, but in reply.

The defence is not bound to give notice that medical evidence of the prisoner's mental condition will be called. **REX v. SMITH (GILBERT OSWALD) - C. C. A. 8 Cr. App. R. 72**

*Murder—Defence of insanity—No witnesses called by the defence—Medical evidence as to prisoner's sanity.*

**REX v. ABRAMOVITCH - C. C. A.  
 7 Cr. App. R. 145 ; 23 Cox, C. C. 179 ; 107  
 L. T. 416 ; 76 J. P. 287**

*Relevancy.*

*Breaking into dwelling-house with intent to ravish a woman—Evidence that shortly afterwards accused had carnal knowledge of another woman—Evidence as to accused's state of mind and body—Admissibility—"No substantial miscarriage of justice"—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, sub-s. 1.*

The appellant was indicted for having in the night time broken and entered a dwelling-house with intent to ravish a woman. The evidence for the prosecution was to the effect that the appellant broke into the house between midnight and 1 A.M., that the prosecutrix, hearing a noise, came downstairs, when the appellant seized her, and pulled up her clothes, and that upon the woman's father coming downstairs he went away. The defence at the trial was that the evidence for the prosecution was not true, that the appellant went to the house for the purpose of courting the prosecutrix with her consent, and that he did not break into the house and did not intend or attempt to ravish her. The prosecution tendered evidence that the appellant at about 2 A.M. on the same morning went to the house of another woman, about three miles from the prosecutrix's house, and gained access to her bedroom down the chimney, and with her con-

**CRIMINAL LAW (Evidence)—continued.**

sent had connection with her. It was contended that this evidence was admissible to shew the state of the appellant's mind and body at the time when he broke into the prosecutrix's house, and coupled with the evidence of what happened when he was in the house was admissible to shew the intent with which he broke in. The evidence was admitted and the appellant was convicted :—

*Held*, that the evidence was relevant to any of the issues in the case, and was not admissible, and that, as the jury might have been influenced by it, the Court could not say that no substantial miscarriage of justice had occurred so as to allow of the application of the proviso to s. 4, sub-s. 1, of the Criminal Appeal Act, 1907, and that therefore the conviction must be quashed. **REX v. RODLEY**

**C. C. A. [1913] 3 K. B. 468 ; 82 L. J. (K. B.)  
 1070 ; 9 Cr. App. R. 69 ; 109 L. T. 476 ;  
 [1913] W. N. 240 ; 77 J. P. 465 ;  
 29 T. L. R. 700 ; 58 S. J. 51**

*Carnal knowledge of girl—Deposition of accused before justices on charge of misdemeanour—Admissibility of deposition at trial for felony.*

The prisoner was indicted under s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), for the felony of carnally knowing, in March, 1911, a girl under the age of thirteen years. He was also indicted under s. 5 of the same Act for the misdemeanour of carnally knowing the same girl in April, 1912, she then being above the age of thirteen years and under the age of sixteen years. When before the justices the prisoner, who was then only charged with the misdemeanour under s. 5, gave evidence, in the course of which he admitted having had intercourse with the girl in March, 1911, and at Christmas, 1911, but not at any later date. At the trial the prosecution proceeded with the indictment for the felony under s. 4 of the Act and tendered in evidence the prisoner's deposition before the justices when before them on the misdemeanour charge under s. 5 :—

*Held*, that the deposition was admissible in evidence. **REX v. CHAPMAN**

**Channell J. 29 T. L. R. 117**

*Carnal knowledge of girl above thirteen and under sixteen years of age—Statement by counsel for prosecution and evidence given by prosecutrix that prisoner seduced her—Cross-examination of prosecutrix as to acts of connection with other men—Denial by prosecutrix—Evidence to prove the previous acts of connection—Evidence of general bad character of prosecutrix—Admissibility—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5, sub-s. 1.*

By s. 5, sub-s. 1, of the Criminal Law Amendment Act, 1885, any person who "unlawfully and carnally knows . . . any girl being of or above the age of thirteen years and under the age of sixteen years" shall be guilty of a misdemeanour.

At the trial of a prisoner for an offence under the sub-section counsel for the prosecution stated in his opening speech that the prisoner upon the occasion when he committed the offence had seduced the girl, and in her

**CRIMINAL LAW (Evidence)—continued.**

examination-in-chief she gave evidence to that effect. No objection to the opening statement of counsel for the prosecution or to the questions put by him to the girl in her examination-in-chief was taken by counsel for the prisoner. She was cross-examined by counsel for the prisoner as to whether she had previously had connection with other men whose names were mentioned and also as to whether she was a loose and abandoned girl. She answered these questions in the negative. Counsel for the prisoner tendered evidence to prove the previous specific acts of connection by the prosecutrix and to shew generally that she was of bad and light character and therefore not to be believed. The judge rejected this evidence as going to credit only. The jury convicted the prisoner. Upon an appeal by the prisoner against his conviction:—

*Held*, that the judge at the trial had rightly rejected the evidence, inasmuch as the allegation that the prisoner had seduced the girl was not relevant to the issue, and therefore no evidence could be given to contradict it. Nor could the evidence be given for the purpose of contradicting the witness in order to shew that she was unworthy of belief, as the rule that the answers of a witness to questions put in cross-examination which merely go to credit cannot be contradicted applied.

*Held*, further, that the fact that the allegation had been introduced by the prosecution did not make it relevant to the issue.

*Semble*, that the expression "general status of the witness" used by Alderson B. in giving judgment in *Att.-Gen. v. Hitchcock* (1847) 1 Ex. 91, refers to the competency of the witness. *REX v. CARGILL*

C. C. A. [1913] 2 K. B. 271; 82 L. J. (K. B.) 655; 8 Cr. App. R. 224; 23 Cox. C. C. 382; 77 J. P. 347; 108 L. T. 816

*Criminal Law Amendment Acts, 1885 and 1904—Carnal knowledge of girl under sixteen.*

On an indictment for carnal knowledge on a given date, the jury must be distinctly directed to disregard any evidence of a similar offence on another date which may have been given.

Whether such evidence may be given in respect of an occasion not within the statutory period of six months prescribed in the second proviso of s. 5 of 48 & 49 Vict. c. 69, the Criminal Law Amendment Act, 1885, as amended by 4 Edw. 7, c. 15 (the Prevention of Cruelty to Children Act, 1904), s. 27, *quære*. *REX v. PROBERTS* - - C. C. A. 8 Cr. App. R. 113

*Evidence of matters occurring more than six months before commencement of prosecution—Admissibility—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5, sub-s. 1.*

The appellant was convicted upon an indictment, under s. 5, sub-s. 1 of the Criminal Law Amendment Act, 1885, for having had unlawful carnal knowledge of a girl above the age of thirteen and under the age of sixteen in Dec., 1912. The prosecution was commenced in May, 1913. At the trial evidence was tendered on behalf of the prosecution to prove matters which occurred more than six

**CRIMINAL LAW (Evidence)—continued.**

months before the date of the commencement of the prosecution and would tend to shew that the prisoner had guilty relations with the prosecutrix before that date. This evidence was objected to on behalf of the prisoner, but, after argument, it was admitted by Rowlatt J.

The C. A. *held* that the evidence was admissible, notwithstanding the proviso to s. 5 of the Criminal Law Amendment Act, 1885; and that *Reg. v. Beighton* (1897) 18 Cox. C. C. 535, must be overruled, if and so far as it conflicts with this decision. *REX v. SHELLAKER*  
C. C. A. [1913] W. N. 372

*Evidence relating to another indictment.*

When on the trial of an indictment evidence relative to another indictment has been admitted, the Court will quash a conviction. *REX v. POSNETT (JAMES WILLIAM)*

C. C. A. 9 Cr. App. R. 64

*Solicitation.*

*Soliciting for immoral purposes—Male person—Solicitation not reaching mind of person solicited—Vagrancy Act, 1898 (61 & 62 Vict. c. 39), s. 1, sub-s. 1.*

By s. 1, sub-s. 1, of the Vagrancy Act, 1898, "Every male person who . . . (b) in any public place persistently solicits or importunes for immoral purposes shall be deemed a rogue and vagabond within the Vagrancy Act, 1824, and may be dealt with accordingly."

The appellant was watched by two police officers on a certain night and was seen to enter certain public lavatories and to remain a few minutes in each. While in the lavatories and also while in the street he made certain gestures, but he did not at any time speak to or touch anybody or attempt to do so. No person complained as to his conduct or alleged that he had been solicited, nor was any evidence given that any person had noticed his solicitations except the police officers. The appellant having been convicted under s. 1, sub-s. 1, of the Vagrancy Act, 1898, of having persistently solicited for immoral purposes:—

*Held*, that it was not necessary in order to convict the appellant to prove that the solicitation reached the mind of the person intended to be solicited so as to attract his notice. *HORTON v. MEAD* - - Div. Ct. [1913] 1 K. B. 254; 82 L. J. (K. B.) 200; 23 Cox. C. C. 279; 108 L. T. 156; [1912] W. N. 304; 77 J. P. 129

*Unlawful Carnal Knowledge.*

See above, Relevancy.

**Extradition.**

See EXTRADITION.

**False Pretences.**

*Continuing false pretence—Goods obtained under a Contract.*

How long a false pretence once made continues to operate, if goods are obtained, is a question for the jury. *REX v. MORETON (WILLIAM)*

C. C. A. 8 Cr. App. R. 214; 109 L. T. 417

**CRIMINAL LAW (False Pretences)—continued.***Intent to Defraud.*

The fact that something of value was given in exchange for money obtained by false pretences does not necessarily negative an intent to defraud.

The definition of defrauding in the *London and Globe Finance Corporation, Ltd., Case* [1903] 1 Ch. at 732, *per* Buckley J., approved.

When the hearing of an appeal is adjourned, the Court generally allows sentence to run from that date. *REX v. BENNETT (BERKELEY) AND NEWTON (ARTHUR)*

C. C. A. 9 Cr. App. R. 146

*Obtaining money by false pretences*—"Three-card trick"—*Gaming Act, 1845* (8 & 9 Vict. c. 109), s. 17.

*REX v. BRIXTON PRISON (GOVERNOR). Ex parte SJOLAND AND ANOTHER* - Div. Ct. [1912] 3 K. B. 568; 82 L. J. (K. B.) 5; [1912] W. N. 237; 77 J. P. 23; 29 T. L. R. 10

See above, Appeal to C. C. A.—*Mis- carriage of Justice.*

**Forgery.***Forged or Altered Instrument.*

*Cut-out letter*—*Forgery Act, 1861* (24 & 25 Vict. c. 98), s. 38.

*REX v. HOWSE* - C. C. A. 7 Cr. App. R. 103; 23 Cox, C. C. 135; 107 L. T. 239; 76 J. P. 151; 28 T. L. R. 186; 56 S. J. 225

*Forged Stamps.*

*Stamps cancelled when sold by dealer*—*Stamp Duties Management Act, 1891* (54 & 55 Vict. c. 38), s. 13.

Stamps purporting to be cancelled (and not only unused stamps) may be "forged" within s. 13 of the Stamp Duties Management Act, 1891. *REX v. LOWDEN (GEORGE)*

C. C. A. 9 Cr. App. R. 195; [1914] 1 K. B. 144; [1913] W. N. 318; 30 T. L. R. 70; 58 S. J. 157

**Fraud.**

*Fraudulently inducing execution of an instrument*—*Valuable security.*

A document may be a "valuable security" within s. 90 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), although invalid as the instrument it purported to be. *REX v. GRAHAM (LAWRENCE BRISCO)* - C. C. A. 8 Cr. App. R. 149

*Fraud—Obtaining credit by.*

On an indictment for obtaining credit by fraud, it is not enough to prove that as the result of a fraud money was obtained; it must be proved that credit was obtained. *REX v. GREEN (GEORGE)* - C. C. A. 8 Cr. App. R. 127

**Fraudulent Conversion.**

See below, Larceny Act, 1901.

**Habitual Criminal.**

*Evidence—Convict on licence—Effie and a half months' interval since last imprisonment—Failure to report to police the only evidence as to conduct during interval—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 10.

In order to prove that a convict on licence

**CRIMINAL LAW (Habitual Criminal)—contd.**

is leading persistently a dishonest or criminal life within the meaning of s. 10, sub-s. 2 (a) of the Prevention of Crime Act, 1908, proof that he has not reported himself to the police is not by itself sufficient evidence to bring the case within the terms of the section. *REX v. MITCHELL* - C. C. A. 23 Cox, C. C. 284; 108 L. T. 224

The fact that appellant has been doing work during the greater part of a short interval of liberty is not necessarily conclusive against his being a "habitual criminal." *REX v. SMITH (JOHN)* - C. C. A. 8 Cr. App. R. 150

*Fugitive from justice—Persistently leading dishonest life—Period to which such evidence must relate.*

If a criminal who evades arrest does honest work during that period, the fact should be considered in his favour on the question whether he is a habitual criminal. *REX v. BROWN (ALFRED)* C. C. A. [1913] W. N. 296; 30 T. L. R. 40; 58 S. J. 69; 9 Cr. App. R. 161

*Leading dishonest or criminal life—Onus of proof—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 10, sub-ss. 1, 2.

On the allegation of being a habitual criminal the onus is on the Crown to prove that the deft. "is leading persistently a dishonest or criminal life" and not on him to disprove it.

It is a misdirection in such a case to ask the jury to consider whether he has made up his mind to reform. *REX v. YOUNG (JAMES)*

C. C. A. 9 Cr. App. R. 185; 30 T. L. R. 69; 58 S. J. 100

See above, Appeal to C. C. A.—*Sentence.*

*Notice of intention to insert charge in indictment of being habitual criminal—Grounds upon which intention to insert charge is founded—Evidence of grounds—Sufficiency of notice—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 10, sub-s. 4 (b).

A notice given to a prisoner pursuant to s. 10, sub-s. 4, of the Prevention of Crime Act, 1908, that it was intended to insert in an indictment against him a charge that he was a habitual criminal and was leading persistently a dishonest and criminal life contained (inter alia) the following ground:—

"That when you were asked to give some account of yourself, in order that you might have an opportunity of shewing that you had since the date of your last release from prison been following some honest employment, you declined to give any information which could be verified on the subject"—

*Held*, that, although in point of form the ground was not one upon which the prisoner could be convicted of being a habitual criminal, it did not invalidate the notice, inasmuch as it was in fact a notice of the evidence that would be used against the prisoner for the purpose of satisfying the jury that he had not been leading an honest life since the date of his last release from prison, and the fact that the notice stated that the evidence would be given did not make it bad, although there was no legal obligation

**CRIMINAL LAW (Habitual Criminal)—contd.**

under the statute to state what evidence would be produced. *REX v. WEBBER* - C. C. A. [1913] 1 K. B. 33; 82 L. J. (K. B.) 108; 23 Cox. C. C. 323; 108 L. T. 349; 76 J. P. 471

There is a presumption that the notice to "the proper officer of the Court" of an intention to charge a prisoner as a habitual criminal (under s. 10, sub-s. 4 (b), of the Prevention of Crime Act, 1908 (8 Edw. 7, c. 59)) has been duly given: the onus is on the prisoner of shewing that it has not.

Previous convictions other than the three in the statutory notice to the prisoner may be proved less strictly than these.

*REX v. Franklin* (1909) 3 Cr. App. R. 48, followed. *REX v. WESTWOOD* (FREDERICK CHARLES) - C. C. A. 8 Cr. App. R. 273; 77 J. P. 379; 29 T. L. R. 492

See also above, Appeal to C. C. A.—*Miscarriage of Justice*.

*Notice—Grounds of charge—Specific notice—Prevention of Crime Act, 1908* (8 Edw. 7, c. 59), s. 10 (4).

Unless notice has been given to the deft., evidence that he is the associate of thieves cannot be given to prove that he is a habitual criminal. *REX v. Mawfield* (1912) 7 Cr. App. 230 followed. *REX v. NEILSON* (PETER)

C. C. A. 9 Cr. App. 213

*Onus of proof—Sentence.*

On the trial of the allegation of being a habitual criminal the jury should clearly be directed that the onus of proof is on the Crown, and their attention should be expressly directed to evidence tending to the conclusion that the deft. has been striving to lead an honest life in the period immediately preceding arrest.

A police officer, called for the Crown on this issue, is entitled to express his opinion on this point in the accused's favour.

A previous conviction of the accused which has been quashed ought not to be given in evidence.

There is no general rule that the term of preventive detention should be five years.

*REX v. Hamilton*, 9 Cr. App. R. 90, commented on. *REX v. SULLIVAN* (GEORGE)

C. C. A. 9 Cr. App. R. 201

**Husband and Wife.**

See above, Appeal to C. C. A.—*Miscarriage of Justice, and Evidence—Husband and Wife.*

**Imprisonment.**

See below, Sentence.

**Indictment.**

— Company.

See LONDON—Nuisance.

*Conspiracy and Protection of Property Act, 1875* (38 & 39 Vict. c. 86).

An indictment under s. 7 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), is not bad, because the words "being an act which the said" prosecutor "had a legal

**CRIMINAL LAW (Indictment)—contd.**

right to do or abstain from doing" are omitted, provided the allegation of the offence follows the statute. *REX v. HULME* (GEORGE WILLIAM) C. C. A. 8 Cr. App. R. 78

— Joint indictment—Separate verdicts.

See below, Jury.

*Larceny—Joinder of several charges against different defendants—Larceny Act, 1861* (24 & 25 Vict. c. 96), s. 5.

Sect. 5 of the Larceny Act, 1861, which provides that "It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing not exceeding three which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them," does not authorize the joinder in one indictment of a count for larceny against one defendant alone with a count for another larceny against the same defendant and another person jointly. Such an indictment is bad and may be quashed after verdict. *REX v. EDWARDS. REX v. GILBERT* - C. C. A. [1913] 1 K. B. 287; 82 L. J. (K. B.) 347; 8 Cr. App. R. 128; 23 Cox, C. C. 380; 108 L. T. 815; 77 J. P. 135; 29 T. L. R. 181; 57 S. J. 187

*Procurement—Omission of words "under twenty-one years of age"—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 2, sub-s. 1.

The prisoner was charged with an offence under s. 2, sub-s. 1, of the Criminal Law Amendment Act, 1885. Under the above section it is an offence for any person to procure any girl or woman under twenty-one years of age. The indictment alleged that the prisoner "unlawfully did procure a certain girl—to wit, one M. B.—she, the said M. B., not being a common prostitute, &c.," but did not allege that M. B. was under twenty-one:—

*Held*, that the words "under twenty-one years of age" only govern the word "woman." *REX v. JONES* (SARAH) - C. C. A. 23 Cox, C. C. 48

*Sufficiency of indictment—Indecent assault on girl under thirteen—Absence of averment of age—Offences against the Person Act, 1861* (24 & 25 Vict. c. 100), s. 52—*Criminal Law Amendment Act, 1880* (43 & 44 Vict. c. 45), s. 2—*Children Act, 1908* (8 Edw. 7, c. 67), s. 123, sub-s. 2.

*REX v. STEPHENSON* C. C. A. [1912] 3 K. B. 341; 82 L. J. (K. B.) 287; 8 Cr. App. R. 36; 23 Cox, C. C. 214; 107 L. T. 656; [1912] W. N. 228; 76 J. P. 408; 56 S. J. 764

**Insanity.**

— Evidence.

See above, Evidence.

*Mental deficiency.*

Mental deficiency does not necessarily entitle a jury to return a special verdict on the ground of insanity.

*REX v. McLaren* (1913) 9 Cr. App. R. 107, followed. *REX v. ALEXANDER* (THOMAS) C. C. A. 9 Cr. App. R. 139

**CRIMINAL LAW—continued.****Jury.**

*Joint indictment—Separate verdicts as to different offences.*

Where several prisoners make an affray in concert, it is open to the jury to find them individually guilty of different offences. *REX v. CONNOR (CHARLES)* - C. C. A. 8 Cr. App. R. 152; 77 J. P. 247; 29 T. L. R. 212

— Verdict.

*See Appeal to C. C. A.—Miscarriage of Justice.*

**Larceny.****Conversion.**

Prima facie the conversion of a bailed chattel by sale is fraudulent; the onus of proving that the transaction is a loan is on the bailee. *REX v. PRICE (FRANK)* - C. C. A. 9 Cr. App. R. 15

**Trick.**

Retaining goods sent on the faith of a promise to pay for them on delivery may amount to larceny by a trick. *REX v. EDMUNDSON* - C. C. A. 8 Cr. App. R. 107

*See above, Appeal to C. C. A.—Miscarriage of Justice.*

**Larceny Act, 1901.**

*Fraudulent trustee—Treasurer of friendly society—Misappropriation of funds—Prosecution—Necessity of sanction of Attorney-General—Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1.*

The sanction of the Att.-Gen. is not a necessary preliminary to the prosecution of an offender under s. 1, sub-s. 1, of the Larceny Act, 1901. *REX v. DAVIES* - C. C. A. [1913] 1 K. B. 573; 82 L. J. (K. B.) 471; 8 Cr. App. R. 179; 23 Cox, C. C. 351; 108 L. T. 576; [1913] W. N. 55; 77 J. P. 279; 29 T. L. R. 300; 57 S. J. 73

*Taxicab driver—Failure to account to cab proprietor for his share of takings—Receipt for or on account of proprietor—Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1, sub-s. 1 (b).*

Where the proprietor of a taxicab delivers it to a driver for the purpose of his plying with it for hire upon the terms that the driver will hand over to him a certain percentage of the day's takings while retaining the balance for himself, it is competent for the jury to find that, to the extent of the proprietor's share, the fares received by the driver from the public are so received by him for or on account of the proprietor within the meaning of s. 1 of the Larceny Act, 1901. *REX v. MESSER* - C. C. A. [1913] 2 K. B. 421; 82 L. J. (K. B.) 914; 23 Cox, C. C. 59; 107 L. T. 31; 76 J. P. 128

**Libel.**

*See below, Sentence; and EVIDENCE—Bankers' Books.*

**Manslaughter.**

*Intending to kill one person but accidentally killing another—Circumstances in which crime may be reduced to manslaughter.*

If a person feloniously fires at another in such circumstances as would make the killing of that

**CRIMINAL LAW (Manslaughter)—continued.**

other person manslaughter, but by accident he hits and kills a third person whom he never intended to hit at all, he is guilty of manslaughter. *REX v. GROSS* - C. C. A. 23 Cox, C. C. 455; 77 J. P. 352

*See below, Murder.*

**Master and Servant.**

— Criminal liability of master for negligence of servant.

*See NUISANCE—Smoke.*

**Miscarriage of Justice.**

*See above, Appeal to C. C. A.*

**Misdirection.**

*See above, Appeal to C. C. A.*

**Murder.****Circumstantial Evidence.**

On an indictment for murder circumstantial evidence may suffice. *REX v. ROBERTSON (FREDERICK ALBERT)* - C. C. A. 9 Cr. App. R. 189

**Constructive Murder.**

*Killing another person in an attempt to commit suicide.*

Killing another person, in an attempt to commit suicide, may be murder. *REX v. HOPWOOD (EDWARD)* - C. C. A. 8 Cr. App. R. 140

**Drunkenness.**

Drunkenness is not a good defence on a charge of murder, unless it can be positively proved that it was of such a nature that the accused did not know the difference between right and wrong. *REX v. GALBRAITH* - C. C. A. 8 Cr. App. R. 101

**Insanity.**

*See above, Insanity.*

**Provocation.**

*Man and woman living together—Illicit intercourse with another man.*

The sudden discovery by a man that a woman with whom he is living as his wife is in a disreputable house affords no such provocation in law as will reduce the crime of killing her from murder to manslaughter.

The law as to a husband who suddenly discovers his wife in the act of adultery has no application in the case of a man and woman not being husband and wife, although they be living together as husband and wife.

Words in *Re v. Palmer* [1913] 2 K. B. 29, commented on. *REX v. GREENING*

C. C. A. [1913] 3 K. B. 846; 29 T. L. R. 732; 8 Cr. App. R. 105

*Parties engaged to be married—Confession by woman of immorality.*

Although a confession of adultery by a wife to her husband, who in consequence kills her, may be such provocation as will entitle the jury in their discretion to find a verdict of manslaughter instead of murder, a similar confession of illicit intercourse by a woman who was not the prisoner's wife but only engaged

**CRIMINAL LAW (Murder)—continued.**

to be married to him cannot, if he kills her in consequence, justify such a verdict. *REX v. PALMER* - C. C. A. [1913] 2 K. B. 29; 82 L. J. (K. B.) 531; 8 Cr. App. R. 207; 23 Cox, C. C. 377; 108 L. T. 814; [1913] W. N. 80; 77 J. P. 340; 29 T. L. R. 349

*Suspicion of wife's adultery.*

Mere suspicion of a wife's adultery is not sufficient to reduce a husband's homicide of the suspected person to manslaughter.

*REX v. Rothwell* (1871) 12 Cox, C. C. 145, distinguished. *REX v. BIRCHALL* (WILLIAM HARRISON)

C. C. A. 3 Cr. App. R. 91; 109 L. T. 478; [1913] W. N. 260; 29 T. L. R. 711

The plea of provocation may be rebutted by the occurrence of a long interval before the commission of the offence, especially if that be due to a desire for revenge. *REX v. ALBIS* (JOHN) - C. C. A. 9 Cr. App. R. 158

See above, Appeal to C. C. A.—*Mis-carriage of Justice.*

**Official Secrets Act, 1911.***"Enemy."*

The word "enemy" in s. 1 of the Official Secrets Act, 1911 (1 & 2 Geo. 5, c. 28), does not necessarily imply that this country is at war.

It does not follow that, because it is open to the jury to find a verdict to convict of a lesser offence than that charged, the judge must so direct them. *REX v. PARROTT*

C. C. A. 8 Cr. App. R. 186

**Penal Servitude.**

See below, Sentence.

**Perjury.**

*Corruptly swearing to false affidavit—Commissioners for Oaths Act, 1889* (52 & 53 Vict. c. 10), s. 7.

*REX v. CASTIGLIONE AND PORTEOUS* C. C. A. 7 Cr. App. R. 233; 23 Cox, C. C. 46; 106 L. T. 1023; 76 J. P. 351; 28 T. L. R. 403

*Materiality.*

On an indictment for perjury, materiality is to be tested by reference to the bearing of the impugned evidence on other evidence.

*Reg. v. Tate* (1871) 12 Cox, C. C. 7, doubted. *REX v. HEWITT* (ARTHUR) - C. C. A. 9 Cr. App. R. 192

— Misdirection.

See above, Appeal to C. C. A.

**Procurator.**

See above, Indictment.

**Prostitution.**

See below, Sentence.

**Punishment.**

See below, Sentence.

**Quarter Sessions.**

See JUSTICES.

**CRIMINAL LAW,—continued.****Receipt of Stolen Goods.**

See above, Appeal to C. C. A.—*Mis-carriage of Justice.*

**Recognizances.**

See below, Sentence.

**Sentence.***Imprisonment.*

*Libel—Sentence of imprisonment for maximum term—Recognizances to keep peace—Sureties—Imprisonment in default of finding sureties—Jurisdiction.*

Where a person is convicted of maliciously publishing a defamatory libel under s. 5 of the Libel Act, 1843, the Court may as part of its sentence, in addition to ordering the deft. to be imprisoned for the maximum term allowed by that section, order him upon the expiration of that term to enter into recognizances and find sureties to keep the peace for a reasonable time named in the order, and in default of his so doing to be further imprisoned until the expiration of the period during which he is so required to keep the peace. *REX v. TRUEMAN* - C. C. A. [1913] 3 K. B. 164; 82 L. J. (K. B.) 916; 109 L. T. 413; [1913] W. N. 198; 77 J. P. 423

*Penal Servitude.*

*Holder of licence—Indictment for another offence—Plea of guilty—Bound over to come up for judgment—"Conviction"—Forfeiture of licence—Unexpired portion of previous sentence—Liability to serve—Penal Servitude Act, 1864* (27 & 28 Vict. c. 47), ss. 4, 9.

The Penal Servitude Act, 1864, provides by s. 4 that if the holder of a licence granted under the Penal Servitude Acts "is convicted, either by the verdict of a jury or upon his own confession, of any offence for which he is indicted, his licence shall be forthwith forfeited by virtue of such conviction"; and by s. 9 (as amended by s. 3, sub-s. 3, of the Penal Servitude Act, 1891), where a licence "is forfeited by a conviction on indictment of any offence, . . . the person whose licence is forfeited . . . shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which his licence is forfeited . . . further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time of his licence being granted":—

*Held*, that the holder of a licence, who pleads guilty to an indictable offence and is bound over to come up for judgment when called on, has been "convicted" within the meaning of s. 4, and his licence is forfeited, and under s. 9 he may be detained in custody and compelled to serve a term of penal servitude equal to the unexpired portion of his previous sentence. *REX v. RABJOHNS*

C. C. A. [1913] 3 K. B. 171; 82 L. J. (K. B.) 904; 109 L. T. 414; 77 J. P. 435; 29 T. L. R. 614



**CRIMINAL LAW (Sentence)—continued.***Recognizance.**Duration.*

A recognizance to be of good behaviour should bind for a definite period. *REX v. EDGAR (CHARLES)* - C. C. A. 9 Cr. App. R. 13; 109 L. T. 416; 77 J. P. 356; 29 T. L. R. 512; 57 S. J. 519

See JUSTICES.

*Whipping.*

"Offender whose age does not exceed sixteen years"—Whether age to be considered as of date of offence or of conviction—*Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 4.

An offender against s. 4 of the Criminal Law Amendment Act, 1885, whose age exceeds sixteen years at the date of the conviction, though he was under sixteen at the date of the offence, is not "an offender whose age does not exceed sixteen years" within the meaning of that section and cannot be sentenced to be whipped. *REX v. CAWTHRON* - C. C. A. [1913] 3 K. B. 168; 82 L. J. (K. B.) 981; 109 L. T. 412; [1913] W. N. 198; 77 J. P. 460

*Pendency of proceedings.*

"Proceedings" are "pending" within the Criminal Law Amendment Act, 1912 (2 & 3 Geo. 5, c. 20), when a warrant has been issued before the day that Act came into force. *REX v. BROWN (WILLIAM)* - C. C. A. 3 Cr. App. R. 173

*Prostitution, Living on — Punishment — Whipping—Conviction as rogue and vagabond — Conviction on indictment— "Second or subsequent conviction"—Vagrancy Act, 1898* (61 & 62 Vict. c. 39), s. 1, sub-s. 1 (a)—*Criminal Law Amendment Act, 1912* (2 & 3 Geo. 5, c. 20), s. 7, sub-s. 5.

By s. 1, sub-s. 1 (a), of the Vagrancy Act, 1898, every male person who knowingly lives wholly or in part on the earnings of prostitution shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and may be dealt with accordingly.

By s. 7, sub-s. 5, of the Criminal Law Amendment Act, 1912, a person charged with an offence under the Vagrancy Act, 1898, may, instead of being proceeded against as a rogue and vagabond, be proceeded against on indictment. On conviction on indictment he is liable to imprisonment for a term not exceeding two years, "and, in the case of a second or subsequent conviction, such second or subsequent conviction being a conviction on indictment, the Court may, in addition to any term of imprisonment awarded, sentence the offender, if a male, to be once privately whipped":—

*Held*, that, in order to justify a sentence of whipping under this enactment on a second or subsequent conviction, it is not necessary that the previous conviction or convictions should be a conviction or convictions on indictment,

**CRIMINAL LAW (Sentence)—continued.**

or that it or they should have taken place since the Act. *REX v. AUSTIN* - C. C. A. [1913] 1 K. B. 551; 82 L. J. (K. B.) 387; 8 Cr. App. R. 169; 23 Cox. C. C. 346; 108 L. T. 574; [1913] W. N. 37; 29 T. L. R. 245; 57 S. J. 287

*Prostitution, Procuring — Punishment — Whipping—Proceedings pending—Criminal Law Amendment Act, 1885* (48 & 49 Vict. c. 69), s. 2, sub-s. 2—*Criminal Law Amendment Act, 1912* (2 & 3 Geo. 5, c. 20), ss. 3, 8.

By s. 3 of the Criminal Law Amendment Act, 1912, any male person who is convicted under s. 2 of the Criminal Law Amendment Act, 1885, may, at the discretion of the Court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to be once privately whipped as therein provided.

By s. 8 the Act shall not apply to proceedings pending at the commencement of the Act.

A person accused of an offence under s. 2 of the Act of 1885 was arrested and charged before, and tried and convicted after, the commencement of the Act of 1912. He was sentenced to be whipped under s. 3 of the Act:—

*Held*, that proceedings were pending at the commencement of the Act of 1912 within the meaning of s. 8 of the Act, and that there was no power to impose the sentence of whipping. *REX v. O'CONNOR* - C. C. A. [1913] 1 K. B. 557; 82 L. J. (K. B.) 335; 8 Cr. App. R. 167; 23 Cox. C. C. 334; 108 L. T. 384; [1913] W. N. 38; 29 T. L. R. 245; 57 S. J. 287

*Repeated offences under Vagrancy Act, 1898* (61 & 62 Vict. c. 39), s. 1—Whether punishable with whipping under Vagrancy Act, 1824 (5 Geo. 4, c. 83), ss. 4, 5, 10.

By s. 1 of the Vagrancy Act, 1898, every male person who commits an offence of the kind therein specified "shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and may be dealt with accordingly":—

*Held*, that upon a second conviction under that section the offender may be dealt with as an "incorrigible rogue" under s. 10 of the Act of 1824, and, on being sent to the quarter sessions, may be ordered by them to be punished by whipping. *REX v. HERION* - C. C. A. [1913] 1 K. B. 284; 82 L. J. (K. B.) 82; 8 Cr. App. R. 99; 23 Cox. C. C. 387; 108 L. T. 848; [1912] W. N. 276; 77 J. P. 96; 29 T. L. R. 93; 57 S. J. 130

**Shooting with Intent to Murder.**

*Two defendants — Shooting by one—Common purpose.*

If two persons are engaged in a common unlawful enterprise, and one of them, to avoid apprehension, attempts murder, both may be found guilty of the felony, if the jury are satisfied from their conduct at the time that at any moment there was a determination on the part of each to aid the other in escaping arrest;

**CRIMINAL LAW** (Shooting with Intent to Murder)—*continued*.

but if it can be ascertained which actually made the attempt, the sentence on him should be the heavier. **REX v. PRIDMORE**

C. C. A. 8 Cr. App. R. 198 : 77 J. P. 339 :  
29 T. L. R. 330

**Shooting with Intent to Resist Apprehension.**

*See above, Appeal to C. C. A.—Miscarriage of Justice.*

**Solicitation.**

*See above, Evidence—Solicitation.*

**Threat to Murder.**

*Sending letter — “Maliciously” — Offences against the Person Act, 1861 (24 & 25 Vict. c. 100).*

**REX v. JOHNSON (MARY)** - C. C. A. 9 Cr.  
App. R. 57

**Unlawful Wounding.**

*Apprehension of personal injury.*

**REX v. BECH** - C. C. A. 7 Cr. App. R. 197 ;  
23 Cox, C. C. 181 ; 107 L. T. 481 ; 76 J. P. 287

**Vagrancy.**

— Indictment.

*See above, Indictment—Procurement.*

— Prostitution, Living on.

*See above, Sentence.*

— Solicitation.

*See above, Evidence—Solicitation.*

**Verdict.**

*See above, Jury.*

**Whipping.**

*See above, Sentence.*

**CROSSING VESSELS**—Ship—Collision—Overtaking and overtaken vessels—Suction or interaction—“Swerve.”  
*See SHIPPING—Collision.*

**CUL-DE-SAC**—Building owner's right to enclose dead end of cul-de-sac—Alleged highway—Dedication—Evidence.  
*See HIGHWAY—Dedication.*

**CURATES**—Church of England.

*See INSURANCE (NATIONAL)—Employment.*

**CUSTOMS AND INLAND REVENUE.**

*See REVENUE.*

**CY-PRES**—Charity—Gift for a school—Failure of particular object.  
*See CHARITY.*

**DAMAGE**—Ancient lights—Obstruction—No damage—Negative easement.  
*See LIGHT AND AIR.*

— Horse, Damage from kick of—Liability of owner—Scienter.  
*See WORKMEN'S COMPENSATION.*

**DAMAGE—continued.**

— Insurance (Plate glass)—Damage “caused directly by or arising from civil commotion or rioting”—Breaking windows.  
*See INSURANCE (PLATE GLASS).*

— Overflow of water from lavatory in upper floor.

*See NEGLIGENCE—Malicious Act of Third Person.*

— Railway—Carriage of goods—Steam vessels—Contract for through carriage—Exception of negligence—Reasonableness—Damage to goods during land carriage.  
*See RAILWAY.*

— Shipping—Damage to goods—Jurisdiction—Bill of lading—Arbitration clause.  
*See SHIPPING—Jurisdiction.*

— Shipping—Charterparty—Neglect to close discharge valve—Incursion of sea water—Damage to cargo.  
*See SHIPPING—Charterparty*

— Shipping—Collision.  
*See SHIPPING—Collision.*

— Shipping—Fire—Damage to cargo—Unseaworthiness—Bill of lading—Exceptions.  
*See SHIPPING—Fire.*

**DAMAGES**—Assessment of damages by a Master—Appeal from Master—Court to which appeal lies.

*See APPEAL—Court of Appeal.*

— Building contract—Construction—Liquidated damages.  
*See SCOTTISH LAW.*

— Chattel mortgage—Damages for negligent sales of horses—Law of Canada.  
*See CANADA—Alberta.*

— Common, Rights of—Turbary—Estovers—Nuisance—Abatement—Excessive trespass—Cutting down trees—Injunction.  
*See COMMON.*

— Docks—Agreement to give right to berth—Breach.  
*See DOCKS.*

— Fatal accident—Evidence—Prospective loss.  
*See FATAL ACCIDENTS ACT, 1846.*

— Foreign judgment—Court in British India—Decree for divorce and damages against co-respondent—Co-respondent domiciled and resident in England—Action by petitioner to recover upon the decree for damages.  
*See FOREIGN JUDGMENT.*

— Injunction—Interim.  
*See INJUNCTION.*

— Insurance company—Winding-up—Proofs—Breach of contract—Measure of damages.  
*See COMPANY WINDING-UP—Proof.*

— Lease—Action by mortgagee for rent—Right of tenant to set off damages claimed from lessor.  
*See SET-OFF—Lease.*

**DAMAGES**—*continued.*

- Lease—Covenant to repair—Unassignability of right to damages for waste.  
*See CHOSE IN ACTION.*
- Libel.  
*See DEFAMATION.*
- Sale of goods—Breach of warranty—Loss of trade—Measure of damages.  
*See SALE OF GOODS—Warranty.*
- Sale of goods—Contract for goods to be manufactured—Measure of damages—Company—Winding-up—Proof.  
*See SALE OF GOODS—Damages for Breach of Contract.*
- Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Agricultural ditch—Injunction—Damages.  
*See LOCAL GOVERNMENT—Drainage.*
- Shipping—Charterparty—Period of demurrage not specified—Detention of ship beyond a reasonable time.  
*See SHIPPING.*
- Vendor and purchaser—Omission to prevent acquisition of title under Statute of Limitations—Liability of vendor—Measure of damages.  
*See VENDOR AND PURCHASER.*
- Workmen's Compensation.  
*See WORKMEN'S COMPENSATION—Remedies.*

**DAMPNESS**—London building—Party structure—Defective party wall—Making good or repairing.  
*See LONDON—Building.*

**DANGEROUS ANIMAL.**

*See NEGLIGENCE.*

**DANGEROUS ARTICLE**—Sale by manufacturer to shopkeeper—Defect unknown to manufacturer—Purchase by plaintiff from shopkeeper—Injury to plaintiff—Liability of manufacturer.  
*See NEGLIGENCE.*

**DANGEROUS PLACES**—Public footpath running along bank of river.  
*See HIGHWAY—Repairs.*

**DEATH**

*See CONTRACT—Termination, LUNACY, and STOCK EXCHANGE.*

**DEATHS (BIRTHS, MARRIAGES, AND)**—Non-parochial registers—Certificates of recording clerk—Admissibility.  
*See EVIDENCE—Public Document.*

**DEBENTURES**—Company.

*See COMPANY—Debentures.*

**DEBT**—Assignment.

*See COMPANY and CHOSE IN ACTION.*

— Interpleader—Judgment for a debt—Goods of judgment debtor taken in execution and sold—Claim by assignee of the debt of proceeds of sale.  
*See COUNTY COURT—Interpleader.*

*Release—Cancellation—Will—Construction*

**DEBT**—*continued.*

— *Deduction of debts from settled legacies—Advances by testator—Entries in testator's ledger*  
— *Release of debt—Continuing intention—Appointment of debtor as executor.*

A testator during his life made advances of 9800*l.* to his son-in-law M. In the testator's ledger there was an entry with respect to M.'s debt in 1905 that 5000*l.* had been given off the debt for an object arranged with M.'s wife and, in June, 1909, there was a further entry, "This debt is absolutely cancelled from this date, viz., 4800*l.* and interest. Edward Pink." By his will, made in March, 1908, the testator appointed M. to be one of his executors and settled a sum of 20,000*l.* and one fourth of his residue upon M.'s wife and children and directed that if M.'s wife should die within seven years of his death, any sum due from M. should be absolutely extinguished, and that any loss sustained in respect of any indebtedness of M. should be credited as a loss to the trust legacy of 20,000*l.* and not as a loss to his residuary estate. Upon a summons by the legal personal representatives of the testator to have it determined whether the debts were still due, Eve J. held that there was not sufficient evidence of an intention by the testator to make a gift, and even if there were such an intention or an imperfect gift, it was not perfected by the appointment of M. as executor, that the case did not come within *Strong v. Bird* (1874) L. R. 18 Eq. 315, and that the whole debt of 9800*l.* was still due.

M. and his wife appealed :—

*Held* (varying the order of Eve J. [1912] 1 Ch. 498), that as to 5000*l.* the indebtedness continued, but as to 4800*l.* it had been released by the testator, and the defect in M.'s title had been cured by his appointment as executor. The only debt therefore that could be enforced against him was that of 5000*l.* *In re PINK. PINK v. PINK* - - C. A. [1912] 2 Ch. 528; 81 L. J. (Ch.) 753; 107 L. T. 241; [1912] W. N. 204; 28 T. L. R. 526; 56 S. J. 688

— Will—Charge of legacies and debts on specific realty and personality in foreign country  
— Mixed fund—Non-exoneration of residuary personality.  
*See WILL—Charge.*

— Will—Trust to pay debts out of mixed fund  
— Debt, whether barred against personal but not against real estate.  
*See LIMITATIONS, STATUTES OF—Charge.*

**DEBTOR**—Bank guarantee—Duty of bank to guarantor—Non-disclosure by bank to guarantor of suspicions concerning conduct of debtor—Whether guarantor discharged.  
*See PRINCIPAL AND SURETY.*

— Co-judgment debtors—Time given to one judgment debtor—Discharge of surety.  
*See PRINCIPAL AND SURETY.*

**DEBTS**—Administration—Adjustment of accounts between tenant for life and remainderman.  
*See ADMINISTRATION—Accounts.*

**DEBTS—continued.****— Company.**

See COMPANY—Debts.

- Right of principal to indemnity by surety against liability—Will—Construction.  
See PRINCIPAL AND SURETY.

**DECLARATION OF TRUST—Breach of trust—**

Appropriation of security by defaulting trustee to meet breach of trust—Irrevocable declaration.

See TRUSTEE.

**DECLARATORY JUDGMENT.**

See MINES—Coal Mines and LOCAL GOVERNMENT — Rural District Council.

**DEDICATION—Highway.**

See HIGHWAY—Dedication.

**DEED — Alteration — Interpretation — Word struck out.**

Case stated by an umpire under s. 19 of the Arbitration Act, 1889.

A. G. Duncan and H. V. Pryce entered into a deed of partnership. Clause 13 of the deed provided that either partner might withdraw from the partnership after a certain time by giving notice to the other as therein prescribed. By clause 14, in that event the other partner might purchase the share of the outgoing partner on giving notice as therein prescribed. By clause 15 the sum to be paid for the outgoing partner's share was to be the net value thereof after providing for the debts and liabilities, to be ascertained in case of difference by valuation, and paid as therein mentioned. By clause 16 the sum to be paid for the share of an outgoing partner in the goodwill of the business was, in the events which happened, "a sum of money equal to the share of the outgoing partner in the net profits arising from the said business during the period of one and a half years immediately preceding such dissolution." In this clause the word "net" was struck out and initialled by the partners.

By clause 18 differences between the partners in regard to the construction of the deed were referred to arbitration under the Arbitration Act, 1889.

A. G. Duncan gave notice under clause 13 to withdraw. The parties being unable to agree upon the amount to be paid to him, arbitrators and an umpire were duly appointed. The question was whether the word "profits" in clause 16 meant net profits or gross receipts. During the hearing before the arbitrators the following points were raised:—

1. With a view to explaining the meaning of the word "profits," as used in clause 16, counsel for A. G. Duncan asked him what was said, when the word "net" was struck out of the clause. The umpire rejected this question.

2. Counsel for H. V. Pryce contended that the word "profits" must be construed without reference to the word "net" and without regard to the fact that an alteration appeared on the face of the instrument. Counsel for

**DEED—continued.**

A. G. Duncan contended that the fact of the alteration could be taken into consideration. The umpire decided that the alteration appearing on the face of the instrument could properly be taken into consideration.

A case being stated raising the questions whether these decisions were correct:—

The Court (Ridley, Pickford, and Avory JJ.) held that the decision of the umpire on the first point was right, and that his decision on the second point was wrong. *In re DUNCAN AND PRYCE* - Div. Ct. [1913] W. N. 117

— Invalid execution—Acknowledgment.

See GIFT.

— Reservation.

See MINES.

**DEEDS**—Title deeds—Mortgages—Priority.

See MORTGAGE—Priority.

**DEFAMATION.**

*Discovery*, col. 174.

*Libel*, col. 174.

*Privilege*, col. 175.

*Words not actionable per se*, col. 176.

**Discovery.**

— Interrogatories — Publication to unknown persons.

See DISCOVERY — Interrogatories and PARTICULARS.

— Justification.

See PARTICULARS.

**Libel.**

*Damages—Publication of story in magazine under plaintiff's name—Plaintiff not the writer of the story—Passing off.*

The plt., a writer of reputation, sued the defts. for damages for publishing in their magazine under the plt.'s name a story of which he was not the writer. The plt. alleged that the story was of inferior quality, and being published as by him was damaging to his reputation. In summing up Darling J. directed the jury that if they came to the conclusion that any one reading the story would think the plt. a mere commonplace scribbler, they could give him damages for libel, and, further, that on the claim for passing off, if they thought the facts proved and that damage must certainly ensue, though it was not capable of present proof, they could find for the plt. with damages. *RIDGE v. THE "ENGLISH ILLUSTRATED MAGAZINE,"* LD.

Darling J. 29 T. L. R. 592

— Severing damages—Joinder of defendants.

See below, **Privilege.**

**Fair comment.**

In an action for libel in which the deft. pleads fair comment, the judge, before leaving the question of fair comment to the jury, must be satisfied that the defamatory inference can reasonably be drawn from the stated facts; if it can, it is for the jury to say whether it ought to be drawn. *THE HOMING*

**DEFAMATION (Libel)—continued.**

PIGEON PUBLISHING CO., LD. *v.* THE RACING  
PIGEON PUBLISHING CO., LD.

Scrutton J. 29 T. L. R. 389

**Innuendo.**

*Newspaper — Trade publication — List of decrees in absence—Erroneous entry—Imputation of insolvency.*

In an action for libel brought by a tradesman in Scotland against the proprietors of a trade journal, known as *Stubbs' Weekly Gazette*, the defenders admitted that in a certain issue of their journal the pursuer's name had erroneously appeared in the weekly list of persons against whom decrees in absence had been obtained in the small debts courts, the fact being that the debt had been paid and the action dismissed. This list was headed by a note explaining that in no case did the publication of the decree imply inability to pay on the part of any one named. The pursuer averred that the entry falsely and calumniously represented that he was unable to pay his debts, and the Court approved an issue for the trial embodying this innuendo:—

*Held*, that the entry, when read in connection with the explanatory note, was incapable of bearing the defamatory meaning ascribed to it, and consequently that there was no question to go to the jury, and the issue ought to have been disallowed.

*Crabbe & Robertson v. Stubbs, Ltd.* (1895) 22 R. 860, and *Hunter & Co. v. Stubbs, Ltd.* (1903) 5 F. 920, considered.

Interlocutor of the Second Division of the Ct. of Sess. in Scotland reversed. — *STUBBS, LD. v. RUSSELL* — *H. L. (Sc.)* [1913] A. C. 386;

82 L. J. P. C. 98; 108 L. T. 29; [1913]

W. N. 102; 29 T. L. R. 409

**Privilege.**

*Co-defendants — Malice of one defendant — Printer — Ordinary course of business — Acts incidental to publication.*

The writer of a pamphlet employed a firm of printers to print it. This was a natural and proper means of publishing it. He then circulated the pamphlet among persons having with him a common interest in its contents. It contained statements defamatory of the plt. The writer was actuated by malice. The printers acted in the ordinary course of their business and without malice:—

*Held*, that the privilege of the occasion extended to the printers, but that the malice of the writer defeated the privilege both for the writer and for the printers, and that they were joint tortfeasors and jointly liable to plt.

*SMITH v. STREETFIELD* — *Banks J.* [1913] 3 K. B. 764; 82 L. J. (K. B.) 1237; 109 L. T. 173; [1913] W. N. 263; 29 T. L. R. 707

*Trade protection—Mutual society—Communication to members not privileged—Privilege founded on the general interest of society—Joint defendants—Form of judgment.*

An unincorporated body called the London Association for Protection of Trade was formed in 1842 for the purpose (inter alia) of making inquiries as to the commercial standing and

**DEFAMATION (Privilege)—continued.**

credit of traders, and consisted of such persons as might be elected members, no particular qualification for membership being required. The business of the association was carried on under the superintendence of an unpaid committee of management. Members paid an annual subscription which entitled them to a certain number of inquiries free, and to a further number for an additional payment. The association had accumulated funds which by its rules had to be dealt with in furtherance of the objects of the association and no part of which had ever been divided among the members.

A member of the association applied for information as to the commercial credit of the plt. co. The secretary of the association applied to a third person for the information, who made a report, for which he was paid a fee, containing untrue and defamatory statements of the plt. co. The secretary sent a report in substantially the same terms to the member. In respect of the secretary's report the plt. co. brought an action for libel against the association, the secretary, and the third person:

*Held* by Vaughan Williams and Hamilton L.J.J. (Bray J. dissenting), that the report was not published on a privileged occasion.

*Macintosh v. Dun* [1908] A. C. 390, followed.

*Waller v. Loch* (1881) 7 Q. B. D. 619, distinguished.

Where there is single cause of action against several defts. arising from a joint tort, and the defts. sever their defences, the jury have no power to sever the damages, and judgment cannot be entered against the several defts. for different amounts. *GREENLANDS, LD. v. WILMSHURST AND THE LONDON ASSOCIATION FOR PROTECTION OF TRADE* — *C. A.* [1913] 3 K. B. 507; 109 L. T. 487; 29 T. L. R. 685

**Words not actionable per se.**

*Malicious falsehoods—Special damage—Loss of business—Evidence—Pleading.*

In an action for damage to a business caused by malicious falsehoods, where the words are not defamatory nor actionable per se, the plt. must prove actual loss of customers to whom the words were spoken, and cannot as a rule give evidence of a general decline of business.

*Quære* whether on proof of actual loss the jury might award damages in excess of such actual loss, by way of punishment or example.

*Ratcliffe v. Evans* [1892] 2 Q. B. 524, applied. *LEETHAM v. RANK* — *C. A.* 57 S. J. 111

**DEFENDANTS—Joinder.**

*See PARTIES.*

**DELAY**—Building contract—Arbitration clause — Architect — Disqualification — Collusion — Improper delay in issuing certificate.

*See ARBITRATION—Building Contract.*

— Nullity — Void marriage — Bigamy — Decree nisi — Delay in applying for decree absolute.

• *See DIVORCE—Discretion.*

— Sale of land.

*See VENDOR AND PURCHASER.*

**DELIVERY**—Gift of chattels—Void deed —  
 Acknowledgment — Voluntary gift —  
 Knowledge of donor—Delivery of deed  
 by donor — Redelivery — Passing of  
 property.  
*See GIFT.*

# **DEMISE.**

*See LANDLORD AND TENANT—Lease.*

**DEMURRAGE**—Ship—Charterparty—Period of  
 demurrage not specified—Detention of  
 ship beyond a reasonable time —  
 Damages.  
*See SHIPPING.*

**DENTIST**—Unregistered person—Name or title  
 of dentist—Description implying that person is  
 registered—*Dentists Act, 1878 (41 & 42 Vict.*  
*c. 38), s. 3.*

The appellant, who was in the employment  
 of a county council, was medically examined by  
 the council's medical officer, and received from  
 him a document in which it was stated that, as  
 his teeth were found to be defective, he should  
 see a registered dentist, and that it would be  
 necessary for him to obtain and forward to the  
 medical officer a certificate that his teeth were  
 in a satisfactory condition. At the foot of the  
 document were the words "Please shew this  
 form to the dentist, as only the certificate of a  
 registered dentist can be accepted." The  
 appellant went to the respondent, who practised  
 dentistry, but who was neither a registered  
 dentist nor a legally qualified medical prac-  
 titioner, in the belief that he was a registered  
 dentist, and had his teeth examined. The  
 appellant handed him the above document,  
 telling him that he required a certificate by a  
 registered dentist. The respondent read the  
 document and said that he had given hundreds  
 of such certificates to the Post Office, and that  
 he would give the appellant the certificate  
 required, when he returned on a subsequent day  
 to have his teeth finished. The appellant did  
 not return and no such certificate was given.  
 The respondent did not at any time in writing  
 or orally use the words "dentist" or "registered  
 dentist" or state that he was a person specially  
 qualified to practise dentistry:—

*Held*, that the respondent had taken or used  
 a description implying that he was registered  
 under the *Dentists Act, 1878*, contrary to s. 3 of  
 that Act, and had therefore rendered himself  
 liable to a penalty. **ROBERTSON v. HAWKINS**  
*Div. Ct. [1913] 1 K. B. 57; 82 L. J. (K. B.)*  
*97; 23 Cox. C. C. 239; 107 L. T. 795;*  
*77 J. P. 63; 29 T. L. R. 32*

**"DEPARTMENT"**—Income tax—Head office of  
 "department."

*See REVENUE—Income Tax—Office.*

# **DEPENDANT.**

*See WORKMEN'S COMPENSATION —*  
*Dependants.*

**DEPOSIT**—Company—Charge to secure future  
 advances—Creation of charge—Charge  
 by deposit—Registration.  
*See COMPANY—Charge.*

# **DEPOSIT**—*continued.*

—Tramway company—Landowner—Compensa-  
 tion—Statutory obligation.  
*See TRAMWAY.*

# **DEPOSITIONS.**

*See CRIMINAL LAW—Evidence.*

**DERBYSHIRE (EXCLUSIVE OF SOUTH  
 DERBYSHIRE) DISTRICT RULES**—  
 Coal mines.

*See MINES—Coal Mines.*

**DERELICT**—Ship—Salvage—Towage—Aban-  
 doned vessel—Quantum meruit—Con-  
 ditions substituting salvage for towage.  
*See SHIPPING—Salvage.*

**DESERTION**—Practice—Appeal from justices—  
 Second summons—Res judicata—Wife's  
 costs.

*See DIVORCE—Desertion.*

—Workmen's compensation—Dependants.

*See WORKMEN'S COMPENSATION —*  
*Dependants.*

**DESIGN**—*Infringement—Pattern for set of type*  
*—Matrices for casting—Sale in the United King-*  
*dom for shipment to India—Doing anything with*  
*a view to enable the design to be applied—*  
*Patents and Designs Act, 1907 (7 Edw. 7, c. 29),*  
*s. 60.*

The *Patents and Designs Act, 1907, s. 60*  
 provides: "(1.) During the existence of copy-  
 right in any design it shall not be lawful for any  
 person (a) for the purposes of sale to apply or  
 cause to be applied to any article in any class of  
 goods in which the design is registered the  
 design or any fraudulent or obvious imitation  
 thereof, except with the licence or written con-  
 sent of the registered proprietor, or to do any-  
 thing with a view to enable the design to be so  
 applied."

The plts. were proprietors of a design regis-  
 tered in respect of a set of type metal letters,  
 the claim being for the pattern. The defts.  
 were manufacturers of matrices or moulds in  
 which types are cast, and had recently sold and  
 delivered to the India Office in London matrices  
 for casting type for purposes of sale in India  
 in accordance with the plts.' registered design.  
 It was admitted that the matrices were intended  
 for shipment to Madras, and that the design  
 would not be applied to any type in the United  
 Kingdom:—

*Held*, that, although the copyright in the  
 design afforded the plts. no protection in India,  
 still the acts of the defts. in this country were  
 in contravention of the concluding words of  
 s. 60, sub-s. 1 (a). **JOHN HADDON & Co. v.**  
**R. P. BANNERMAN & SON** — **Warrington J.**  
*[1912] 2 Ch. 602; 81 L. J. (Ch.) 766; 29*  
*R. P. C. 611; [1912] W. N. 193; 56 S. J.*

750

*Infringement—Novelty—Amendment of*  
*defence by alleging want of authorship—Amend-*  
*ment disallowed—Rectification of register—*  
*Jurisdiction of Lancaster Palatine Court—*  
*Designs held not to be novel—Designs if valid*  
*held not to have been infringed—Action dismissed*

**DESIGN—continued.**

*with costs—Patents and Designs Act, 1907, ss. 48, 49, 52, 73, 78.*

BRITISH INSULATED AND HELSBY CABLES, LD. v. LONDON ELECTRIC WIRE CO. AND SMITHS, LD. *Stewart Smith v. C. of the County Palatine of Lancaster* - 30 R. P. C. 620

*Want of novelty—Motion to expunge—Design expunged.*

*In re COOK AND BERNHEIMER CO.'S REGISTERED DESIGN* *Joyce J. 30 R. P. C. 407*

**DETERMINABLE LIFE INTEREST** — Will—Construction.  
*See WILL.*

**DETINUE**—Fixtures.  
*See FIXTURES.*

**DEVASTAVIT**—Executor.  
*See LIMITATIONS, STATUTES OF—Devastavit.*

**DEVISE**—Will—Construction.  
*See WILL.*

**DIRECTOR**—Company.  
*See COMPANY—Director, and COMPANY—WINDING-UP—Contributories, List of.*

**DISCHARGE.**  
*See BANKRUPTCY—Discharge.*

— Bank guarantee—Duty of bank to guarantor  
— Non-disclosure by bank to guarantor of suspicions concerning conduct of debtor—Whether guarantor discharged.  
*See PRINCIPAL AND SURETY.*

— Surety—Co-judgment debtors—Time given to one judgment debtor.  
*See PRINCIPAL AND SURETY.*

**DISCLAIMER**—Legacy—Right to retract—Trust legacy—Successive life interests—Refusal by first life tenant to receive income—Payment to second life tenant—Death of second life tenant—Right of first life tenant to retract refusal quoad future income.

Trustees accepted and held a trust legacy in trust for the plt. for life and after her death for her son for life and after his death for the residuary legatees, but the plt., being annoyed at the terms of the will, refused to receive the income, and with her consent it was paid to her son.

On the death of her son eight years later the plt. retracted her refusal quoad future income.

The residuary legatees took the view that the plt.'s refusal amounted to a disclaimer of her interest in the legacy and could not be retracted—

*Held*, that the plt.'s refusal to receive the trust income could not be treated on the footing of disclaimer of a legacy, and that, as neither the trustees nor residuary legatees had changed their position on the faith of that refusal, it could be retracted quoad future income.

*Semble.* Notwithstanding the passages in Sheppard's Touchstone, 7th ed., p. 452, an

**DISCLAIMER—continued.**

actual disclaimer, until acted upon, may be retracted. *In re YOUNG. FRASER v. YOUNG*

*Swinfen Eady J. [1913] 1 Ch. 272 ; 82 L. J. (Ch.) 171 ; 108 L. T. 292 ; [1913] W. N. 19 ; 29 T. L. R. 224 ; 57 S. J. 26*

**DISCOVERY.**

*Bankruptcy. See BANKRUPTCY*

*Co-defendants, col. 180.*

*Documents, Affidavit of, col. 180.*

*Documents, Inspection of, col. 181.*

*Documents, Production of, col. 181.*

*Interrogatories, col. 182*

**Bankruptcy.**

*See BANKRUPTCY.*

**Co-Defendants.**

*Rights to be adjusted between the parties—R. S. C., Order XXXI., rr. 12, 14.*

The plt. claimed as assignee of the deft. J. to be entitled to an aliquot part of certain commission which he alleged was due from the defts. B. & Co. to the deft. J. B. & Co. by their defence alleged that the plt. had no right at all, inasmuch as they had a claim against J. for damages for misrepresentation which they were entitled to set off against any claim by him for commission. They did not, however, put in any counter-claim :—

*Held* by Cozens-Hardy M.R. and Kennedy L.J. (Swinfen Eady L.J. dissenting), that B. & Co. were not entitled to an order for discovery against J.

*Shaw v. Smith* (1886) 18 Q. B. D. 193, applied.

Decision of Warrington J. affirmed. *BIRCHALL v. BIRCH, CRISP & Co. G. A. [1913] 2 Ch. 375 ; 82 L. J. (Ch.) 442 ; 109 L. T. 275 ; [1913] W. N. 197*

**Documents, Affidavit of.**

*Further affidavit—R. S. C., Order XXXI., rr. 12, 19A.*

BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS, LD. v. NETTLEFOLD

*H. L. (E.) [1912] A. C. 708 ; 81 L. J. (K. B.) 1125 ; 107 L. T. 529 ; [1912] W. N. 212*

*Person of unsound mind—Next Friend—Affidavit of documents—R. S. C., Order XXXI., rr. 12, 29.*

The next friend of a person of unsound mind cannot be ordered to file an affidavit of documents under Order XXXI., r. 12.

*Dyke v. Stephens* (1885) 30 Ch. D. 189 applied.

*Higginson v. Hall* (1879) 10 Ch. D. 235, not followed.

In an action by a person of unsound mind by a next friend an order was made under Order XXXI., r. 12, that the person of unsound mind by his next friend "and such next friend" should file an affidavit of documents, and the next friend filed an affidavit accordingly, and the

**DISCOVERY (Documents, Affidavit of)**—*contd.*  
 defts. then applied for a further and better affidavit:—

*Held*, that, the order having been made without jurisdiction, the Court could refuse the application without first setting aside the order.  
**PINK v. J. A. SHARWOOD & Co., LD.**

**Eve J. [1913] 2 Ch. 286; 82 L. J. (Ch.) 542; 108 L. T. 1017; [1913] W. N. 211; 57 S. J. 663**

*Trade mark — Passing off — Practice — “Typical” orders and invoices disclosed by plaintiffs—Order made for further and better affidavit of documents—Appeal dismissed.*

In an action for passing off the plts. alleged that for a great number of years they had continuously and extensively used, and still used, certain trade marks. In their affidavit of documents they exhibited three orders and three copy invoices for goods of their special brand containing one or other of their said trade marks, and they deposed that they had in their possession numerous orders and copy invoices similar to those produced. The deft. refused to accept this as a sufficient affidavit of documents, and asked for inspection of all the orders and copy invoices on which the plts. proposed to rely. The plts. refused to give inspection. The deft. accordingly applied to the Court for an order directing the plts. to file a further and better affidavit of documents. The vacation judge, confirming the Master, made the order asked for. The plts. appealed to the C. A.:—

*Held*, that the plts. had acted unreasonably in refusing inspection; that the order made was right; and that the appeal must be dismissed with costs. **ANDREW (JOHN HENRY) & Co., LD. v. KUEHNRIICH** - **C. A. 29 R. P. C. 698**

#### Documents, Inspection of.

*Shipping — Collision — Practice—Value of sunken lightship—Inspection of owners’ books—R. S. C., Order XXXI., r. 18 (1).*

**THE PACUARE** - **C. A. [1912] P. 179; 81 L. J. (P.) 143; 12 Asp. Mar. Law Cas. 222; [1912] W. N. 189**

#### Documents, Production of.

*Privilege—Documents coming into existence after litigation in contemplation for the purpose of furnishing solicitor with evidence and information to enable him to conduct defence—Order XXXI., r. 19A (2).*

In an affidavit of documents on behalf of the defts. in an action of negligence privilege was claimed for certain documents in a schedule to the affidavit on the ground that “they came into existence and were made after this litigation was in contemplation and in view of such litigation for the purpose of obtaining for and furnishing to the solicitor of the defendant company evidence and information as to the evidence which could be obtained and otherwise for the use of the said solicitor to enable him to conduct the defence in this action and to advise the defendants.”

A judge at chambers, after inspecting the documents under the provisions of Order XXXI., r. 19A (2), made an order by which some of the documents were protected and others were ordered to be disclosed, the dividing line being

**DISCOVERY (Documents, Production of)**—*contd.*  
 drawn at the date on which the plts. first preferred their claim against the defts.:—

*Held*, first, that the judge at chambers and the Court of Appeal were entitled under Order XXXI., r. 19A (2.), to inspect the documents for the purpose of deciding on the validity of the claim of privilege, as no particular formula of words in the affidavit could be conclusive against evidence furnished by the documents themselves; and, secondly, after inspecting the documents, that protection had been appropriately claimed for them by the affidavit and that the dividing line drawn by the judge in chambers was inappropriate in the particular case.

It is not necessary that the affidavit should state that the information was obtained “solely” or “merely” or “primarily” for the solicitor, if it was obtained for the solicitor in the sense of being procured as materials upon which professional advice should be taken in proceedings pending, or threatened, or anticipated. **BIRMINGHAM AND MIDLAND MOTOR OMNIBUS CO., LD. v. LONDON AND NORTH WESTERN RY. CO.**

**C. A. [1913] 3 K. B. 850; 109 L. T. 64; 57 S. J. 752**

— Production as between co-defendants—**R. S. C., Order XXXI., rr. 12, 14.**  
*See above, Co-defendants.*

*Secret process—Action to restrain former servants of plaintiffs from divulging—Order for discovery—Claim of privilege for recipe for secret process—Order made for production and limited order for inspection—Appeal by plaintiffs—Appeal dismissed.*

**REDDAWAY & CO., LD. v. FLYNN AND OTHERS,**  
**C. A. 30 R. P. C. 16**

#### Interrogatories.

##### Defamation.

*Libel—Contents of document in possession of defendant’s employers.*

Appeal from Bucknill J. at chambers.

The plt. claimed damages for a libel alleged to have been published of him, at a time when he was a candidate at a by-election for Parliament, by the deft., who was the secretary of a trade union called the Dock, Wharf, Riverside and General Workers’ Union of Great Britain and Ireland. The alleged libel related to a strike of the men employed by a tramway co. of which the plt. was managing director. The defence was a denial of the printing and publication of the alleged libel, fair comment, and justification.

The deft. filed an affidavit of documents which contained the following paragraph: “The documents set forth in the second schedule hereto relating to the matters in question in this action are in the possession, custody and power of the Dock, Wharf, Riverside and General Workers’ Union of Great Britain and Ireland, of which I am general secretary, and I have no property in or power to produce the same, as they belong to the said union.”

The plt. applied for leave to administer to the deft. the following interrogatory: “What are the contents of the documents specified in the schedule to your affidavit of documents sworn herein on the 24th day of October, 1912?”



**DISCOVERY (Interrogatories)—continued.**

Exhibit copies of the said documents to the answer to this interrogatory." The Master refused leave for this interrogatory to be administered, and Bucknill J. affirmed his decision.

The plt. appealed.

The Court (Farwell L.J. and Kennedy L.J.) dismissed the appeal.

Farwell L.J. said that the application was a novel one. The deft. was secretary of a trade union; he was therefore in the same position as a servant. It was of course hopeless for the plt. to try and obtain production of these documents, because they did not belong to and were not in the possession of the deft., but belonged to his employers. The plt. therefore sought by means of this interrogatory to compel the deft. to supply him with copies of the documents; but it was well established that a servant could not be ordered to make copies of documents in the possession of his master. Where production of a document could not be obtained, because the document was in the joint possession of the deft. and another person who was not a party to the action, the Courts had held that the deft. could be compelled to exhibit a copy of the document to an interrogatory, because it was within his power to do so (see *Hadley v. McDougall* (1872) L. R. 7 Ch. 312, and *Rattenbury v. Munro* (1910) 103 L. T. 560), but that was very different from ordering a servant to make copies of documents which belonged to his master.

Appeal dismissed. BALFOUR v. TILLET

C. A. [1913] W. N. 70; 29 T. L. R. 332; 57 S. J. 357

*Libel—Newspaper—Fair comment—Fair and accurate report of proceedings of a public meeting—Interrogatories to prove malice—Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 4.*

The plt. claimed damages for an alleged libel contained in the defts.' newspaper. The defts. pleaded (1) fair comment; and (2) that the alleged libel formed part of a fair and accurate report of a public meeting within the meaning of s. 4 of the Law of Libel Amendment Act, 1888; and that the matter published was of public concern and for the public benefit, and the newspaper was a newspaper within the above section.

The plt. did not deliver a reply alleging express malice. He sought to interrogate the defts. as to whether they had been requested to attend the said meeting, and whether they had received remuneration for reporting the proceedings. The interrogatories were consistent with the plt. having in fact no information on which to found his interrogatories.

Bailhache J. at chambers, affirming the Master, refused to allow the interrogatories:—

*Held*, that, although the interrogatories were not necessarily inadmissible, the Court would not interfere with the discretion of the judge at chambers. DAWSON v. DOVER AND COUNTY CHRONICLE, LD.

C. A. 108

L. T. 481; 29 T. L. R. 373

*—Libel—Particulars of justification—Facts on which defendant relies in support of justification.*

See PARTICULARS.

**DISCOVERY (Interrogatories)—continued.**

*Slander—Publication to unknown persons.*

In an action for slander, imputing immoral conduct to the plt., a married woman, the statement of claim alleged publication to one named person, and publication also during three specified years to various other persons unnamed. The plt. sought to administer to the deft. interrogatories asking whether the deft. had in any of the three years altered the words complained of or words to the same effect to any persons, other than the person named, and the names of the other persons, if any:—

*Held*, that the interrogatories were inadmissible.

Russell v. Stubbs, LD. (1908) 52 Sol. Jo. 580, and [1913] 2 K. B. 200, note, discussed and distinguished. BARHAM v. LORD HUNTINGFIELD

C. A. [1913] 2 K. B. 193; 82 L. J. (K. B.) 752; 108 L. T. 703

**Patent.**

*Action for infringement—Application by plaintiffs for leave to deliver interrogatories—Leave to deliver certain interrogatories given by judge—Appeal in respect of some of these interrogatories—Appeal allowed.*

ACTIENGESSELLSCHAFT FÜR ANILIN FABRIKATION IN BERLIN AND THE MERSEY CHEMICAL WORKS, LD. v. LEVINSTEIN, LD.

C. A. 30 R. P. C. 401

*Action for infringement—Application for further and better answers to interrogatories—Application for leave to deliver further interrogatories—Applications refused—Defendants not compelled to disclose the process under which they were working—Interrogatory not in accordance with the terms of the specification of the patent sued on.*

ACTIENGESSELLSCHAFT FÜR ANILIN FABRIKATION IN BERLIN v. LEVINSTEIN, LD.

Warrington J. 30 R. P. C. 673

**Relevancy.**

*Justification of matters of fact—Plea of fair comment as to expressions of opinion—Trading company—Imputations of insolvency and mismanagement—Discovery—Production of documents—Balance sheets—Books of accounts and ledgers—Bank books—Practice—R. S. C. (Ir.), Order XXXI, rr. 13–15.*

In an action of slander brought by a limited co. trading on the co-operative system and registered as a friendly society, the deft. pleaded, inter alia, the truth in their ordinary sense of the words spoken, so far as they were allegations of fact, and fair comment as regards expressions of opinion. The defamatory matter was contained in a speech delivered by the deft., and the only allegations of fact in it were statements of the assets and liabilities of the society on the expiration of three several years. Under an order for discovery the society's secretary and manager made an affidavit, the schedule to which disclosed the balance sheets for these years, and also the society's ledgers, books of account, and bank books, claiming no privilege. In accordance

**DISCOVERY (Interrogatories)—continued.**

with notice by the deft. the society produced the balance sheets for his inspection, but declined to produce the remaining scheduled documents. The balance sheets agreed with the figures quoted by the deft. in his speech. On the society admitting on the order the truth of the figures quoted by the deft. and of the balance sheets, the C. A., affirming the order of Boyd J., declined to order the production of the society's books.

*Kent Coal Concessions v. Duguid* [1910] A.C. 452, distinguished. **IRISH AGRICULTURAL WHOLESALE SOCIETY v. MCCOWAN**

**C. A. (Ir.) [1913] 2 I. R. 313**

**Undue Preference.**

**Railway and Canal Commission—Railway—Particulars—Undue preference.**

The applicants alleged an undue preference by the defts. of the town of G. The defts. denied that there was any undue preference. They said that if the rates from G. were lower, it was owing to the existence of water competition at G., and they further said that the rates charged were necessary in the interests of the public. On an application by the applicants for particulars and discovery, and for leave to administer interrogatories inquiring whether traders in G. had not from time to time, before the application, sent goods over the defts.' lines, and whether the rates charged to them were not the rates now complained of:—

*Held*, that an order should be made for particulars of public interest and the discovery of communications and complaints in regard to the rates, but that an order for interrogatories should not be made, until the applicants gave specific instances of the undue preference of which they complained. **CLAYTON & SHUTTLEWORTH, LD. AND OTHERS v. GREAT CENTRAL RY. AND OTHERS** - **Rail. and Can. Com.** 29 T. L. R. 111

**DISEASE.**

*See* WORKMEN'S COMPENSATION.

**DISEASES OF ANIMALS—Tuberculosis Order of Feb. 13, 1913—Board of Agriculture and Fisheries Order** - • - 11 L. G. R. Orders, 42

**DISOBEDIENCE—Order of Court—Absence of personal service—Disobedient person going out of jurisdiction—Writ of sequestration.**

*See* CONTEMPT OF COURT.

**DISPUTE—National Insurance Act, 1911, ss. 14, 67—Rule of approved society that only a certificate of a panel doctor will be accepted—Ultra vires.**

*See* INSURANCE (NATIONAL) — Approved Society.

**DISQUALIFICATION** — Building contract — Arbitration clause — Architect — Collusion—Improper delay in issuing certificate.

*See* ARBITRATION—Building Contract.

**DISQUALIFICATION—continued.**

— Building contract — Arbitration clause — Engineer—Dispute involving examination of engineer—Staying proceedings. *See* ARBITRATION—Building Contract.

— Justices—Bias.

*See* JUSTICES—Disqualification.

— Parliament—Contract with the Secretary of State for India in Council—Contract for the public service. *See* PARLIAMENT.

**DISTRESS** — Summary jurisdiction—Fine—Default of sufficient distress—Imprisonment—Licensing (Consolidation) Act, 1910.

*See* JUSTICES—Criminal Law.

**Taxes—Tax charged upon premises—Income tax under Sched. A—Goods of a stranger upon the premises—Instrument of Trade—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 86.**

Appeal from the Greenwich county court. In this action the plt. claimed damages for the wrongful distress of her piano. The sum of 12. 11s. was due for income tax under Sched. A. of the Income Tax Act, 1842, and for inhabited house duty, in respect of the house occupied by the husband of the plt. He refused to pay those taxes upon demand by the collector of taxes, and the defts., as agents for the collector, distrained upon the house and there seized a piano which was the property of the plt., and was used by her for the purpose of giving music lessons. The piano was sold under the distress and the balance of the proceeds, after satisfying the amount due for taxes and costs, was paid to the plt.

The county court judge gave judgment in favour of the defts.

The plt. appealed with leave.

The C. A. held that the Law of Distress Amendment Act, 1888, did not apply to a distress for taxes; that income tax under Sched. A. of the Income Tax Act, 1842, and inhabited house duty were taxes charged upon the premises, and that, therefore, following *Juson v. Dixon* (1813) 1 M. & S. 601, a distress for those taxes could be levied upon the goods of a third person upon the premises; that there was no privilege from distress for taxes in respect of an instrument of trade; and that accordingly the distress was justified under s. 86 of the Taxes Management Act, 1880. Appeal dismissed.

**MACGREGOR v. CLAMP & SON.** - **Div. Ct.** [1913] W. N. 342; 80 T. L. R. 128; 58 S. J. 139

— Tithe rent-charge—Recovery — Distress or receiver—Owner in occupation of part only of the lands.

*See* TITHE RENT-CHARGE.

**DISTURBANCE—Ferry from vill to vill or point to point—Change of circumstances.**

*See* FERRY.

**DISUSED BURIAL GROUNDS ACT, 1884, ss. 3, 5.**

*See* BURIAL GROUND.

**DITCH**—Agricultural ditch—Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Injunction—Damages.

See **LOCAL GOVERNMENT—Drainage.**

**DIVIDED PARISHES AND POOR LAW AMENDMENT ACT, 1876.**

See **POOR LAW—Settlement.**

**DIVIDEND**—Apportionment.

See **APPORTIONMENT.**

—Income tax—Deductions from dividends before tax imposed by statute.

See **REVENUE—Income Tax.**

—Shares in company—Tenant for life and remainderman—Reserve fund—Bonus dividend.

See **WILL—Capital and Income.**

**DIVIDENDS**—Tenant for life and remainderman—Preference shares—Death of life tenant—Future dividends—Apportionment.

See **SETTLED LAND.**

**DIVORCE.**

*Access, col. 187.*

*Child. See above, Access.*

*Collusion, col. 188.*

*Condonation col. 188.*

*Contempt of Court. See below, Hearing in Camera.*

*Costs, col. 189.*

*Damages. See below, Pleading.*

*Delay. See below, Discretion.*

*Desertion, col. 190.*

*Discretion, col. 190.*

*Domicil, col. 191.*

*Evidence, col. 192.*

*Foreign Judgment. See FOREIGN JUDGMENT.*

*Hearing in Camera, col. 193.*

*Injunction. See below, Maintenance.*

*Jurisdiction, col. 194.*

*Jury, col. 194.*

*Maintenance, col. 194.*

*Nullity, col. 196.*

*Pleading, col. 196.*

*Restitution of Conjugal Rights, col. 197.*

*Separation Deed, col. 198.*

*Settlement, col. 200.*

*Trial, col. 200.*

#### **Access.**

*Right of access of divorced mother—Age of child—Discretion of Court—Mother living in adultery.*

Although the former rule that a guilty mother who has been divorced by her husband cannot be allowed access to the child of the marriage against the husband's wish is no longer law, the Court has a discretion to permit

**DIVORCE (Access)—continued.**

such access. Where the child was a boy eight years of age, about to be sent to school; and the mother was living in adultery with the co-respondent, the Court refused to order that she should be allowed access.

Decision of Sir Samuel Evans, P., reversed.

*Stark v. Stark* [1910] P. 190, distinguished.

**CLARKE v. CLARKE AND LINDSAY**

C. A. 575, J. 644

**Child.**

See above, **Access.**

#### **Collusion.**

*Petition—Decree.*

Collusion is an improper act done, or an improper refraining from doing an act, for a dishonest purpose.

Where a wife (petitioner), who had obtained a decree of judicial separation on the ground of desertion with permanent alimony at the rate of 160*l.* a year, informed her husband's brother, through whom it was paid, that the allowance was insufficient for the support of herself and her daughter, and was thereupon informed by him that, if she would institute proceedings for divorce, the necessary information for which would be supplied, her husband would pay her a sum of 300*l.* down on the filing of the petition, another 300*l.* on the decree being made absolute, and 500*l.* a year by way of permanent maintenance in lieu of 160*l.* a year theretofore paid as permanent alimony, the Court held that there was in the circumstances no misconduct on the part of the petitioner in consenting to these proposals, and pronounced a decree nisi accordingly.

*Churchward v. Churchward and Holliday (The Queen's Proctor intervening)* [1895] P. 7, distinguished. **SCOTT v. SCOTT - Bucknill J.** [1913] P. 52; 82 L. J. (P.) 39; 108 L. T. 49; 29 T. L. R. 52; 57 S. J. 227

#### **Condonation.**

*Cross-petitions by wife and husband—Husband's admission of adultery in evidence—Condonation by wife not pleaded, but raised during the hearing—Notice of condonation by court—Question as to whether jury should give finding—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 29, 30, 31.*

A wife and husband presented cross-petitions for dissolution of their marriage. During the hearing before the jury the husband admitted adultery, but alleged that it had been subsequently condoned by the wife. There was no allegation of condonation on the pleadings, and the wife denied in evidence that she had condoned her husband's adultery. It was contended by counsel for the husband that the Court was bound to take notice of condonation even if not pleaded, and, if thought advisable, could seek a jury's assistance:—

*Held*, that where condonation had not been pleaded, the Court would take upon itself the responsibility of deciding whether it existed. **MOOSBRUGGER v. MOOSBRUGGER; MOOSBRUGGER v. MOOSBRUGGER AND MARTIN**

**Evans P. 109 L. T. 192; 29 T. L. R. 715**

See below **Discretion.**

**DIVORCE—continued.****Contempt of Court.**

See below, **Hearing in Camera.**

**Costs.**

*Married woman—Practice—Separate estate—Restraint on anticipation—Intervention—Respondent—“Opposite party”—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28—Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 3.*

A wife, having presented a petition for dissolution of marriage on the ground of cruelty and adultery, in her particulars alleged that the adultery had been committed with M. R. An order was made on Oct. 10, 1911, giving M. R. leave to intervene and directing her to file an answer within fourteen days. The intervener filed an answer, and at the trial the jury found that there had been no misconduct between her and the respondent, and the petitioner was ordered to pay her costs. Under her marriage settlement the petitioner was entitled to the income of realty for her life without power of anticipation. The intervener issued a summons for the appointment of a receiver of the life estate. Immediately after the conclusion of the first proceedings the petitioner presented a second petition for dissolution of marriage. This was undefended, and a decree nisi was pronounced on July 9, 1912. On July 22 an order was made by the Pres. that the trustees of the petitioner's settlement should, notwithstanding the restraint on anticipation, pay half her income to the intervener from the date of the summons up to decree absolute, towards satisfaction of her costs. On Mar. 18, 1913, the summons was ordered to stand over until the decree nisi had been made absolute. The petitioner appealed and the intervener gave cross-notice of appeal:—

*Held*, that the intervener was an “opposite party” within s. 2 of the Married Women's Property Act, 1893; that the discretionary power of the Court was not exhausted by the order of July 22, 1912; that the property which the Court could deal with under s. 2 was the whole property which was subject to the restraint on anticipation, and not merely the portion of the property which for the time being was effectively restrained from anticipation, that was to say, during coverture; and that the matter must be remitted to the Pres. to be dealt with according to his discretion. **STUDLEY v. STUDLEY**

**C. A. [1913] P. 119; 82 L. J. (P.) 65; 108 L. T. 657; [1913] W. N. 114; 57 S. J. 425**

*Wife's costs—Husband's petition—Answer making counter-charges and claiming relief—Order for security for wife's costs—Non-compliance—Attachment.*

**JONES v. JONES**      **Bargrave Deane J.**  
**[1912] P. 295; 82 L. J. (P.) 16; 29 T. L. R. 22; 57 S. J. 10**

**Damages.**

See below, **Pleading.**

C.C.D.

**DIVORCE—continued.****Delay.**

See below, **Discretion.**

**Desertion.**

*Appeal from justices—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Second summons—Res judicata—Wife's costs.*

A wife, who was married in 1908, left her husband on Feb. 20, 1910, after which they never cohabited. In April, 1910, a summons which had been taken out by the wife in March, on the ground that her husband had deserted her on Feb. 20, 1910, was dismissed.

A fortnight after the dismissal of that summons, the husband's solicitor received a letter from the wife's then solicitors, making accusations against the husband in reference to matters prior to the separation (which were said to have been since discovered by the wife), and asking whether the husband would agree to make arrangements for his wife's support, and hinting at proceedings in the Divorce Court. The husband's solicitor answered, in effect, that, in consequence of the statements made, he was not prepared to enter into any arrangement.

No proceedings were taken in the Divorce Court, and no further step was taken until Oct. 8, 1912, when a second summons at the instance of the wife was issued, the ground of complaint being alleged desertion by the husband, but without specifying a date.

This second summons came before a bench of nine justices in another town, and they, on Oct. 14, 1912, after overruling an objection that the matter was *res judicata*, and after refusing an application for an adjournment to call rebutting evidence, found the cause of complaint proved, and ordered the husband to pay 10s. for the maintenance of his wife, together with a sum for costs:—

*Held*, on appeal, that the order was wrong and must be rescinded; that the objection which the justices had overruled was good; that the matter was *res judicata*; that there was neither in fact nor in law any desertion of the wife by the husband; and upon the question of costs, that the wife must bear her own, both in the Div. Ct. and in the Court below. **BLACKLEDGE v. BLACKLEDGE** Div. Ct. [1913] P. 9; 82 L. J. (P.) 13; 23 Cox, C. C. 230; 107 L. T. 720; 77 J. P. 427; 29 T. L. R. 120; 57 S. J. 159

**Discretion.**

*Adultery of petitioner—Wife's petition—Decree nisi—Intervention and plea by King's Proctor—Material facts—Withholding or suppressing—Petitioner's answer to plea—Fresh allegation in regard to respondent—Powers and practice of the Court.*

**BROOKE v. BROOKE (THE KING'S PROCTOR SHEWING CAUSE)** **Evans P. [1912] P. 136, 205; 81 L. J. (P.) 75, 147, n; 106 L. T. 766; 107 L. T. 202; 28 T. L. R. 314, 577; 56 S. J. 382**

*Adultery of petitioner—Wife's suit—Discretionary bar—Condonation—Decree—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.*

**DIVORCE (Discretion)—continued.**

• Circumstances in which the Court will exercise its discretion in favour of a guilty petitioner considered. *COVERDALE v. COVERDALE*

30 T. L. R. 20

*Former suit by wife—Cruelty and adultery proved—Husband's petition—Discretion of Court—Decree nisi—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.*

*WOLTERECK v. WOLTERECK AND WALTERS*  
*Evans P. [1912] P. 201; 81 L. J. (P.) 145;*  
*107 L. T. 27; [1912] W. N. 208; 28 T. L. R.*  
*232; 56 S. J. 706*

*Nullity—Void marriage—Bigamy—Decree nisi—Delay in applying for decree absolute.*

A decree nisi can be made absolute notwithstanding a long delay, when the delay is explained, and especially in a case where, if the petition were dismissed, the petitioner would, as of right, be entitled to a decree on filing a fresh petition on the same ground and on proving the same facts, and would also, in due course, be entitled to have the decree made absolute. *GRANT (FALSELY CALLED GIANNETTI) v. GIANNETTI*

*Evans P. [1913] P. 137;*  
*82 L. J. (P.) 111; 108 L. T. 1037;*  
*[1913] W. N. 202; 29 T. L. R.*  
*654; 57 S. J. 774*

*Un defended petition by wife—Delay in commencing proceedings—Motive for presenting petition—Refusal of decree—Discretion—Appeal—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.*

Where there has been a great delay in instituting proceedings for a divorce, the motive for commencing the suit may be taken into consideration when deciding whether there has been unreasonable delay in presenting the petition within s. 31 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85); and where the judge in the exercise of his discretion under that section has refused to grant a divorce on the ground of unreasonable delay, the Court of Appeal will not interfere, unless he has decided the case on some wrong principle of law. *PEARS v. PEARS C. A.*

107 L. T. 505; 28 T. L. R. 568; 56 S. J. 720

*Wife's petition—Adultery of petitioner—Decree.*

On a wife's petition for divorce, the Court, being satisfied that but for the husband's gross misconduct she would not have committed adultery, exercised its discretion by granting her a decree nisi notwithstanding her adultery. *CLELAND v. CLELAND. CLELAND v. CLELAND AND MCLEOD*

30 T. L. R. 169

*Withholding of material facts—Practice—Husband's petition—Decree nisi—King's Proctor's intervention—Exercise of discretion.*

Circumstances in which the Court will exercise its discretion by refusing to rescind a decree nisi on the ground that material facts have been withheld from the knowledge of the Court. *BARRETT v. BARRETT AND VAUGHAN—THE KING'S PROCTOR SHEWING CAUSE*

*Evans P. 30 T. L. R. 63*

**Domicil.**

*Foreign domicil of husband—Separate domicil of wife—Jurisdiction—Decree.*

**DIVORCE (Domicil)—continued.**

The rule or theory of law that the domicil of the husband governs the jurisdiction in suits for dissolution of marriage, as distinguished from other matrimonial suits, may be departed from in proper circumstances.

Where a husband or the parents of a husband domiciled abroad has or have obtained a decree of nullity in the Court of his foreign domicil, and the wife, whose domicil was in England, is thus debarred from obtaining relief in the foreign Court, she may be treated as having a domicil of her own sufficient to give the English Court jurisdiction to entertain a suit by her for dissolution of the marriage.

The dicta of Lord Gorell in *Ogden v. Ogden (otherwise Philip)* [1908] P. 46, at pp. 82, 83, adopted.

*Stathatos v. Stathatos* [1913] P. 46, approved.  
*DE MONTAIGU v. DE MONTAIGU* - *Evans P.*  
*[1913] P. 154; 109 L. T. 79; 29 T. L. R. 654;*  
*57 S. J. 703*

*Jurisdiction—Domicil of wife—Decree.*

A woman, domiciled in England at the time of her marriage with a foreigner, may—after he has debarred her from claiming any relief in the Courts of his foreign domicil by obtaining there a decree of nullity—petition the Court of her own domicil, to which she has reverted, and may obtain a decree here dissolving her marriage.

In proper circumstances, the Court here ought to assume jurisdiction in the wife's suit for dissolution of marriage, by treating her as having a domicil of her own sufficient to support such a suit.

The dicta of Lord Gorell in *Ogden v. Ogden (otherwise Philip)* [1908] P. 46, at pp. 82, 83, adopted. *STATHATOS v. STATHATOS*

*Bargrave Deane J. [1913] P. 46; 82 L. J. (P.)*  
*34; 57 S. J. 114*

**Evidence.**

*Foreign marriage—Practice—Former petition and decree of restitution of conjugal rights—Formal proof of marriage in that suit—Subsequent petition for dissolution—No fresh proof of marriage required.*

The proof of a marriage in a suit for restitution of conjugal rights is sufficient, without further proof, in a subsequent divorce suit between the same parties, unless the validity of the marriage is put in issue. *COWLEY v. COWLEY*

*Evans P. [1913] P. 159; 82 L. J. (P.) 120;*  
*109 L. T. 48; 29 T. L. R. 690*

*Incestuous adultery—Proof of relationship.*

*Per Bargrave Deane J.:* In a suit by a wife for divorce on the ground of her husband's incestuous adultery with her sister, a certificate of birth to prove the relationship should, as a rule, be produced. *GREEN v. GREEN*

*Bargrave Deane J. 29 T. L. R. 357*

*Nullity of marriage—Marriage after banns—Parties never resident in parish where ceremony took place or where banns were published—Husband's petition—Allegation that marriage was null and void—Inadmissibility of evidence in support of petition—Marriage Act, 1823 (4 Geo. 4, c. 76), ss. 22, 26.*

By a petition for nullity of marriage a husband alleged that his marriage was null

**DIVORCE (Evidence)—continued.**

and void on the ground that neither he nor his wife had lived in the parish where the banns were published previous to the ceremony :—

*Held*, that no evidence could be given in regard to the matter owing to the provisions of s. 26 of the Marriage Act, 1823. **BODMAN v. BODMAN (OTHERWISE PERRY)**

**Bargrave Deane J. 108 L. T. 383 ; 29 T. L. R. 348 ; 57 S. J. 359**

*Petition by husband—Jewish marriage—Certificate of marriage by secretary of synagogue only—Necessity for signature of registrar—Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), ss. 30, 31.*

Where the certificate of marriage in a Jewish synagogue had been signed by the secretary in that capacity alone, though he was also certified as registrar, it was

*Held* that he should have signed as secretary and registrar. **PRAGER v. PRAGER AND GOODISON - Bargrave Deane J. 108 L. T. 734 ; 29 T. L. R. 556**

**Foreign Judgment.**

— Court in British India—Decree for divorce and damages against co-respondent—Co-respondent domiciled and resident in England—Action by petitioner to recover upon the decree for damages.  
*See FOREIGN JUDGMENT.*

**Hearing in Camera.**

*Nullity—Hearing in camera—Publication of proceedings after decree—Contempt of Court—Committal—Appeal—Competency—Criminal cause or matter—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 2, 6, 22, 46—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.*

The Probate, Divorce and Admiralty Division has no power, either with or without the consent of the parties, to hear a nullity suit or other matrimonial suit in camera in the interest of public decency.

*Barnett v. Barnett* (1859) 29 L. J. (P. & M.) 28, and *H. (falsely called C.) v. C.* (1859) 29 L. J. (P. & M.) 29 ; 1 Sw. & Tr. 605, followed and approved.

*A. v. A.* (1875) L. R. 3 P. & M. 230, overruled.  
*D. v. D.* [1903] P. 144, considered.

*Per Viscount Haldane L.C.* : The general rule as to publicity must yield to the paramount duty of the Court to secure that justice is done ; and it is open to a party in a matrimonial suit, upon proof that justice cannot be done otherwise, to apply for a hearing in camera, and even for the prohibition of subsequent publication of the proceedings, in exceptional cases.

*Per Earl Loreburn* : In cases where it is shewn that the administration of justice would be rendered impracticable by the presence of the public, as for example where a party would be reasonably deterred by publicity from seeking relief at the hands of the Court, an order for hearing a matrimonial suit in camera may be lawfully made. Subject to the above limitations rules may be made under the Matrimonial Causes Act, 1857, to regulate the hearing of causes in camera.

**DIVORCE (Hearing in Camera)—continued.**

An order was made at the instance of the petitioner in a nullity suit, which was practically undefended, for the hearing of the cause in camera. After a decree nisi had been pronounced the petitioner, through her solicitor, obtained a transcript of the official shorthand writer's notes of the proceedings at the hearing of the cause and sent copies of this transcript to certain persons in defence of her reputation.

Upon a motion by the respondent to commit for contempt of Court the petitioner and her solicitor for publishing copies of this transcript in contravention of the order directing that the cause should be heard in camera, **Bargrave Deane J.** found that the petitioner and her solicitor were guilty of a contempt of Court and ordered them to pay the costs of the motion, and an appeal from this order was dismissed as incompetent :—

*Held*, (1) that the order to hear in camera was made without jurisdiction ; (2) that the order, assuming that there was jurisdiction to make it, did not prevent the subsequent publication of the proceedings ; (3) that the order to pay costs was not a judgment in a "criminal cause or matter" within s. 47 of the Judicature Act, 1873, and that an appeal would lie from it.

Decision of the C. A. [1912] P. 241, reversed.  
**SCOTT v. SCOTT - H. L. (E.) [1913] A. C. 417 ; 82 L. J. (P.) 74 ; 109 L. T. 1 ; [1913] W. N. 145 ; 29 T. L. R. 520 ; 57 S. J. 498**

**Evidence taken in camera.**

In cross-suits for divorce, the case for the wife having been opened in public, and the wife, on being called as a witness, finding it almost impossible to give her evidence by reason of the presence of people in Court, the President directed this part of the case to be heard in camera.

*Scott v. Scott* [1913] A. C. 417, distinguished.  
**MOOSBRUGGER v. MOOSBRUGGER - Evans P. 29 T. L. R. 658**

**Injunction.**

*See below, Maintenance.*

**Jurisdiction.**

*See above, Domicil and Hearing in Camera.*

**Jury.**

— Discharge.

*See below, Trial.*

**Maintenance.**

*Decree nisi—Petition for permanent maintenance of petitioner and allowance for children—Inquiry and report—Motion to confirm report—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1, sub-s. 2—Decree not yet made absolute—Order nunc pro tunc.*

The Court has power, under s. 1 of the Matrimonial Causes Act, 1907, before a decree nisi for dissolution of marriage has been made absolute, to confirm the report of the registrar recommending maintenance for the wife, and to order the husband to pay, after the decree shall have been made absolute, the amount of main-

**DIVORCE (Maintenance)—continued.**

tenance by monthly or weekly sums. *CAVENDISH v. CAVENDISH* - Evans P. [1913] P. 183; 82 L. J. (P.) 112; 108 L. T. 1039; 29 T. L. R. 653; 57 S. J. 741

*Injunction—No subsisting order—Practice.*

The Court, upon a petition for permanent maintenance, and before any specific sum has been made payable by a subsisting order, has no power to grant an injunction, at the instance of a wife, restraining her husband from dealing with his property which may ultimately be affected under a petition for permanent maintenance; and the same principle applies to an application for permanent alimony.

*Newton v. Newton* (1885) 11 P. D. 11, explained and followed.

*Noakes v. Noakes and Hill* (1877) 4 P. D. 60, discussed. *BURMESTER v. BURMESTER*

Evans P. [1913] P. 76; 82 L. J. (P.) 54; 108 L. T. 272; 29 T. L. R. 323; 57 S. J. 392

*Nullity suit—Cross-claims for relief—Decree—Allowance for de facto wife—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1.*

The Matrimonial Causes Act, 1907, gives the Court power, in the exercise of its discretion in each particular case, to order the de facto husband to make an allowance to the de facto wife, after a decree of nullity of marriage, and, where security can be given, to order the whole or any part of such allowance to be secured.

*GULLAN v. GULLAN* (OTHERWISE GOODWIN)

Evans P. [1913] P. 160; 82 L. J. (P.) 118; 109 L. T. 111

*Nullity of marriage—"Husband's" petition—Bigamy of "wife"—"Marriage" declared null and void—Application by respondent for maintenance—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 1.*

A petitioner obtained a decree for nullity of marriage on the ground that at the time of the ceremony the respondent had a husband still living. An application was made that he should be ordered to pay maintenance to the respondent.

The contention of the petitioner, who opposed the application, was that the Matrimonial Causes Act, 1907, under which it was made, did not apply to marriages that were void ab initio:—

*Held*, that the Court had power to order maintenance. *RAMSAY v. RAMSAY* (OTHERWISE BEER) - *Bargrave Deane J.* 108 L. T. 382

*Restitution of conjugal rights—Petition by wife—Refusal of compliance by husband—Periodical payments by husband—For "joint lives" or "for life of wife"—Discretion of Court—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 2.*

By s. 2 of the Matrimonial Causes Act, 1884, it is enacted: "From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife, the Court may, at the time of making such decree, or at any time afterwards, order that in the event of

**DIVORCE (Maintenance)—continued.**

such decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payments, and for that purpose may refer it to any one of the conveying counsel of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties."

A wife, aged forty-two, having obtained a decree for restitution of conjugal rights petitioned for periodical payments to be secured to her by the respondent. The registrar by his report submitted that the husband, who was seventy-seven years of age, should be ordered to secure periodical payments at the rate of 60% per annum "during their joint lives."

On a motion to vary the report to the effect that the periodical payments should be secured to the wife for her life:—

*Held*, that the Court had a discretion as to the duration of time for the payments, and that, having regard to the respective ages of the parties, the report should be varied as prayed. *CLUTTERBUCK v. CLUTTERBUCK*

*Bargrave Deane J.* 108 L. T. 573; [1913] W. N. 132; 29 T. L. R. 480; 57 S. J. 463

**Nullity.**

— Delay.

*See above, Discretion.*

— Hearing in camera.

*See above, Hearing in Camera.*

*Wilful and persistent refusal to allow marital intercourse—Decree.*

Wilful and persistent refusal to allow any marital intercourse is a sufficient ground for a decree of nullity of marriage.

Where, upon a petition for nullity of marriage presented by the husband in good faith, it appeared that the consummation of the marriage had been prevented, after repeated attempts on his part, by the wilful, determined, steadfast refusal of the wife, and the refusal was threatened to be, or likely to be, persisted in, the Court (Sir Samuel Evans, President) held that this constituted a valid and sufficient ground for annulling the marriage. *DICKSON v. DICKSON* (OTHERWISE PHILLIPS). Evans P. [1913]

P. 198; 82 L. J. (P.) 121 (sub nom. *D. v. D.*); 109 L. T. 408; 29 T. L. R. 765; 58 S. J. 32

**Pleading.**

*General charges of adultery and cruelty—Particulars of charges served upon respondent—Allegation of communicating venereal disease—Necessity to plead—Practice.*

Where a petitioner relies upon a charge of wilfully communicating a venereal disease, it should be specifically pleaded in the petition.

*r. E. v. E.* (1907) 23 T. L. R. 364, distinguished. *WALKER v. WALKER* - *Bargrave Deane J.*

107 L. T. 655; 57 S. J. 175

**DIVORCE (Pleading)—continued.**

*Wife's petition—Bigamy with adultery—Specific plea of bigamy—General charge of adultery—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 27.*

Where a case of bigamy is specifically pleaded, adultery with the same woman ought to be specifically pleaded, in order to entitle the petitioner to relief for bigamy with adultery, and a general charge of adultery with divers women will not suffice for this purpose.  
**SPARROW v. SPARROW - Bargrave Deane J.**  
**30 T. L. R. 47**

*Wife's petition for judicial separation—Answer by husband alleging adultery and claiming damages.*

A husband, in answer to his wife's petition for judicial separation, which he resists on the ground of her adultery, may claim damages against the alleged adulterer. A separate petition is not necessary.

An answer in this form having been rejected in the Divorce Registry, the judge in chambers, upon an ex parte application, directed the same to be accepted and filed as originally tendered. **N. v. N.**

**Evans P. [1913] P. 75; 82 L. J. (P.) 56; 108 L. T. 271; 29 T. L. R. 321; 57 S. J. 343**

*Wife's petition for restitution of conjugal rights—Answer alleging wife's adultery—Reply alleging husband's adultery—Par delictum—Compensatio criminis—Irrelevance—Striking out.*

In answer to a wife's petition for restitution of conjugal rights a husband alleged that the wife had committed adultery, but he asked for no relief. The wife replied denying her adultery, and alleging that the husband himself had been guilty of that offence:—

**Held** by Bargrave Deane J. and by the C. A., that having regard to the statutory changes effected by the Matrimonial Causes Acts, 1857 and 1884, the decision in *Seaver v. Seaver* (1846) 2 Sw. & Tr. 665 (Appendix II.), that where both husband and wife had committed adultery, and neither could therefore obtain a divorce a mensa et thoro from the other, yet the wife was entitled to a decree for restitution, no longer applied to English divorce law.

**Held**, therefore that the wife's recrimination of adultery was irrelevant and must be struck out from her reply.

Decision of Bargrave Deane J. (1912) 107 L. T. 721, affirmed.

The view expressed in *Russell v. Russell* [1895] P. 315, followed.

*Seaver v. Seaver, supra*, overruled.  
**BROOKING-PHILLIPS v. BROOKING-PHILLIPS**

**C. A. [1913] P. 80; 82 L. J. (P.) 57; 108 L. T. 397; [1913] W. N. 54; 29 T. L. R. 288**

**Restitution of Conjugal Rights.**

—Periodical payments.

See above, **Maintenance.**

*Petition for restitution of conjugal rights—*

**DIVORCE (Restitution of Conjugal Rights)—continued.**

*Divorce Rules—Written demand by solicitor for cohabitation and the restitution of conjugal rights—Practice.*

With reference to petitions for restitution of conjugal rights, Divorce Rule 175 runs: "The affidavit filed with the petition, as required by rule 2, shall further state sufficient facts to satisfy one of the registrars that a written demand for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party to be cited, and that, after a reasonable opportunity for compliance therewith, such cohabitation and restitution of conjugal rights have been withheld."

The "written demand" in accordance with the above rule should be conciliatory in tone and devoid of any threat; the spirit and not the letter of the rule should be observed.  
**NEUMANN v. NEUMANN**

**Bargrave Deane J. 108 L. T. 48; 29 T. L. R. 213; 57 S. J. 228**

*Wife's petition for conjugal rights—Previous order obtained from magistrate on account of husband's desertion—Non-cohabitation clause—Whole order subsequently discharged on wife's application—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 3, 7—Decree for restitution granted.*

In 1904 a wife, who had been deserted by her husband, obtained a summary order for maintenance. The usual non-cohabitation clause was inserted in the order, but without the knowledge or approval of the applicant.

In 1912 the entire order was discharged upon the wife's application. Subsequently she petitioned in the High Court for restitution of conjugal rights.

The Court granted her a decree for restitution.  
**NILAND v. NILAND**

**Evans P. 108 L. T. 50; 57 S. J. 248**

*Wife's petition—Petitioner guilty of physical violence, but not of cruelty.*

In a suit by a wife for restitution of conjugal rights the husband alleged that the petitioner drank to excess, and, further, that she had been guilty of cruelty towards him. The jury found—(1) that the petitioner had been guilty of physical violence to the respondent, but not of cruelty; (2) that the petitioner drank to excess; (3) that it was not unsafe at the time the respondent left the petitioner for the parties to live together.

**Held**, that a decree of restitution of conjugal rights should be refused.  
**BUTLAND v. BUTLAND**

**Bargrave Deane J. 29 T. L. R. 729**

See above, **Maintenance**; **Pleading**; and below, **Separation Deed.**

**Separation Deed.**

*Covenant not to sue for restitution of conjugal rights—Bankruptcy of husband—Arrears of allowance under deed proved for by wife—Discharge—Effect—Petition for restitution of conjugal rights—Decree.*



**DIVORCE (Separation Deed)**—*continued.*

A husband and wife separated by deed. Both covenanted not to sue the other of them for restitution of conjugal rights, and the husband covenanted to pay an annuity to the wife. A receiving order was made against the husband, which was discharged later after his estate had paid a dividend. The wife had proved and received a dividend on the capital value of her annuity under the deed. Subsequently the wife presented a petition for restitution :—

*Held*, that the annual sum payable to the wife under the separation deed being provable in the husband's bankruptcy, but no action being maintainable against the husband, after he has obtained his discharge, under his covenant to pay the allowance specified in the deed, the deed was no bar to the proceedings for restitution of conjugal rights subsequently instituted by the wife. **MCQUIBAN v. MCQUIBAN** - **Evans P.**  
[1913] P. 208 ; 109 L. T. 412 ; 29 T. L. R. 676

*Matrimonial offences subsequent to deed.*

A separation deed whereby husband and wife agree not to institute proceedings in respect of past matrimonial offences, and containing an express condonation of such offences, being valid, the clauses in such deed must be interpreted according to the ordinary rules of construction.

A husband and wife entered into a deed of separation, whereby (inter alia) they expressly and mutually agreed that any matrimonial offences which might have been committed by either of them before the execution of the deed were thereby condoned ; but, by a subsequent clause, it was agreed (inter alia) that if the marriage should be dissolved or the parties should be judicially separated by reason of any misconduct occurring after the date of the deed, then all the covenants and provisions contained in the deed should become void.

The husband had been guilty of cruelty and adultery before the date of the deed, and it was proved that he had been guilty of adultery after the date of the deed :—

*Held*, that although it was doubtful whether the subsequent adultery revived, either by virtue of or apart from the deed, the offences which by the deed had been expressly condoned, yet, inasmuch as the subsequent adultery of the husband would entitle the wife to a judicial separation, and, thereupon, the covenants in the deed, including the condonation clause, would become void, and she might then in a subsequent proceeding obtain a dissolution of marriage, the Court would not put her to such a circuitous mode of obtaining relief as would thereby be involved, but would at once grant a decree nisi dissolving the marriage.

*Doubling v. Doubling* [1898] P. 228, doubted but followed. **BOURNE v. BOURNE** - **Evans P.**  
[1913] P. 164 ; 82 L. J. (P.) 117 ;  
108 L. T. 1039 ; 29 T. L. R. 657

*Petition by wife—Desertion and adultery of husband—Deed no bar to charge of desertion—Decree granted.*

A husband and wife separated under a deed. After four months the former ceased to make

**DIVORCE (Separation Deed)**—*continued.*

payments under the deed. The wife subsequently petitioned for a divorce on the ground of the husband's desertion and adultery :—

*Held*, that the deed of separation did not prevent the petitioner relying upon the charge of desertion. **HUSSEY v. HUSSEY** - **Evans P.**  
109 L. T. 192 ; 29 T. L. R. 673

**Settlement.**

—Covenant to settle after-acquired property —  
Decree nisi—Property, whether caught by covenant.

*See SETTLEMENT.*

*Petition for—Wife's interest under will without power of anticipation—Second marriage after presentation of petition—Jurisdiction—Lis pendens—Forfeiture on alienation of interest—Effect of order for settlement—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45—Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5.*

**LORAINÉ v. LORAINÉ AND MURPHY**

**C. A. [1912] P. 222 ; 82 L. J. (P.) 29 ;**

**[1912] W. N. 204**

*Variation of—No power of appointment in favour of petitioner's future wife and children of future marriage—Interest of child of dissolved marriage.*

Where, under a marriage which had been dissolved, no power had been given, by the terms of the marriage settlement, to the innocent party if survivor to appoint a portion of the settled fund in favour of a future spouse and the children by any future marriage, the Court, in varying such a settlement, may, although issue of the dissolved marriage survive, give power to make such an appointment, and in the lifetime of the guilty party, to an extent, having due regard to the facts, not detrimental to the interests of such issue. **ATKINS v. ATKINS AND URQUHART**

**Evans P. [1913] P. 211 ; 109 L. T. 640**

**Trial.**

*Petition by husband—Answers by respondent and co-respondent—Cause set down for hearing before judge and special jury—Intimation by solicitor for respondent and co-respondent that no defence would be offered to petition—Application for discharge of jury—Refusal—Practice.*

Before a jury can be discharged, it is necessary that all parties should express their consent. **JONES v. JONES AND ROOSEJONES** - **Evans P.**

**108 L. T. 1038**

**DOCKS—Harbour—Sunken vessel—Obstruction to navigation of Mersey—Right of Mersey Docks Board to destroy vessel—Condition precedent—Mersey Docks Acts, 1874 (37 & 38 Vict. c. xxx.), s. 11, and 1889 (52 & 53 Vict. c. cxi.), s. 29.**

Sect. 11 of the Mersey Docks Act, as amended by s. 29 of the Mersey Docks and Harbour Board Act, 1889, enables the Mersey Docks and Harbour Board to raise, destroy, or remove any wrecks of vessels or any vessels sunk or stranded in any dock or elsewhere within the port of Liverpool which are, "in the judgment of the marine surveyor . . . of the Board . . . such judgment being re-

**DOCKS**—*continued.*

corde<sup>l</sup>, in writing signed by him and deposited with the secretary of the Board," an obstruction to safe and convenient navigation :—

*Held*, that it is not a condition precedent to the exercise by the Board of their statutory power to raise, destroy, or remove a sunken or stranded vessel, that the judgment of the marine surveyor that the vessel is an obstruction to safe navigation should first have been recorded in writing and deposited with the secretary of the Board. It is sufficient to enable the Board to exercise their powers that the marine surveyor honestly comes to the conclusion that the vessel must be raised, destroyed, or removed, and that, within a reasonable time after the forming of his judgment to that effect, he puts it in writing and deposits it with the secretary of the Board. *JONES v. MERSEY DOCKS AND HARBOUR BOARD* *Scrutton J. 18 Com. Cas. 163; 108 L. T. 722; 29 T. L. R. 468*

*Preferential right to occupy berth*—*Wrongful action of other ship in occupying berth*—*Damages.*

A shipping co. had by agreement with a dock co. a preferential right to occupy a certain berth on Wednesday and Saturday in each week and were to use no other berth in the particular port. The berth was at a wharf which was in a half natural, half artificial channel of which the dock co. were lessees from the Crown. The agreement, *inter alia*, provided that in the event of any accident beyond the control of the dock co. causing loss or delay to the shipping co. the latter's remedy was to be the right to use some other berth and that the dock co. should not be liable to make good or pay compensation for any such loss or delay. On Saturday, Oct. 28, 1911, when the shipping co.'s steamer, the *Portia*, arrived, the particular berth where she should have gone was occupied by a Dutch co.'s steamer which had proceeded to and remained at that berth against the orders of the dock co. By reason of shortness of water the Dutch steamer could not be removed to allow the *Portia* to occupy the berth. The *Portia*, by the directions of the dock co., went into an inner dock and was detained there several days owing to shortness of water, and in consequence she lost a complete round voyage. Some of her cargo was shut out, but was taken on by the next steamer of the line. The shipping co. sued the dock co. for damages for the delay caused to the *Portia*, and the dock co. sued the Dutch co. to recover any damages they might be called upon to pay to the shipping co. :—

*Held*, (1.) that the dock co. were liable in damages to the shipping co., inasmuch as by the agreement the dock co. had contracted to use, and had not in fact used, their best endeavours to ensure that the shipping co. should have the use of the berth on the particular day, and, further, that the wrongful occupation of the berth by the Dutch steamer was not an "accident beyond the control of the dock co." within the meaning of the expression in the agreement, as they had not done their utmost to prevent the Dutch steamer

**DOCKS**—*continued.*

occupying the berth; (2.) that the Dutch co., having committed a trespass, were liable to the dock co. in damages, but as the *Portia* did not go into the inner dock on the orders of the Dutch co.'s captain, that co. was not liable in respect of the whole of the detention of the *Portia*; and (3.) that the Dutch co. were not liable to the dock co. in respect of the latter's costs in defending the action against them by the shipping co., inasmuch as in the circumstances it was not reasonable for the dock co. to defend that action. *SOUTH WALES AND LIVERPOOL STEAMSHIP CO., LD. v. NEVILL'S DOCK AND RY. CO., LD. NEVILL'S DOCK AND RY. CO., LD. v. MAATSCHAPPIJ S.S. "BESTEVAAR," ROTTERDAM*

*Scrutton J. 18 Com. Cas. 124; 108 L. T. 568; 29 T. L. R. 301*

*Weighing goods in dock*—*Statutory right of undertakers*—*Exclusive right to weigh*—*Provision of weighing machines*—*Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 81, 82.*

Sects. 81 and 82 of the Harbours, Docks and Piers Clauses Act, 1847, which upon certain conditions give the undertakers the exclusive right of weighing and measuring goods loaded or discharged in their docks, do not give them the exclusive right of providing the weighing machines. *PORT OF LONDON AUTHORITY v. CAIRN LINE OF STEAMSHIPS, LD.*

*Scrutton J. [1913] 1 K. B. 497; 82 L. J. (K. B.) 340; 18 Com. Cas. 72; 12 Asp. Mar. Law Cas. 293; 108 L. T. 217; [1913] W. N. 28; 29 T. L. R. 229*

**DOCTOR.**

*See INSURANCE (NATIONAL) — Approved Society.*

**DOCUMENTS**—*Discovery.*

*See DISCOVERY.*

— *Injunction* — *Privilege* — *Restraint of publication* — *Documents improperly obtained* — *Secondary evidence* — *Copies.*  
*See EVIDENCE — Privilege.*

**DOMICIL**—*Divorce*—*Separate domicile of wife*—*Jurisdiction*—*Decree.*  
*See DIVORCE.*

**DRAIN**—*Lease*—*Covenant by lessee to pay "outgoings"*—*Liability.*  
*See LANDLORD AND TENANT — Lease.*

— *Metropolis* — *Management* — *"Drain"* — *"Sewer"*—*Liability to repair.*  
*See LONDON — Drainage, and LOCAL GOVERNMENT — Drainage.*

**DRAINAGE.**

*See LOCAL GOVERNMENT — Drainage.*

**DURESS** — *Trial*—*Court taking objection* — *Claim illegal or unenforceable by statute*—*Defence on such ground not raised*—*Duty of Court.*

If the Court is satisfied that a transaction is illegal or unenforceable by statute, it must take the objection itself, although the parties may not wish to raise the point. *SOCIÉTÉ DES HÔTELS RÉUNIS v. HAWKER. Scrutton J. 29 T. L. R. 578*  
*See BILL OF EXCHANGE — Duress.*

**DUTY**—Inland Revenue. *See* REVENUE.

**EASEMENT**—Light and air.  
*See* LIGHT AND AIR.

— Market—Extension of—Charter days—Presumption of lost grant—Dedication subject to obstruction—Private market—Tolls.  
*See* MARKET.

— Water—Artificial watercourse—Mill stream—Riparian proprietors—Common owner—Presumption from user—General words.  
*See* WATER.

— Way, Right of.  
*See* WAY, RIGHT OF.

**ECCLESIASTICAL FEES**—Tables of Ecclesiastical Fees, *London Gazette*, March 19, 1896, and June 2, 1908—Canons 86 and 125 of Canons of 1603.  
*See* ECCLESIASTICAL LAW.

**ECCLESIASTICAL LAW**—Charity—Endowment for a "sermon" once a year—Increase in the income—Cy-pres—Religious purposes—Trustees—Scheme.  
*See* CHARITY.

*Civil suit—Procurations—Claims for procurations by archdeacon holding visitation outside limits of defendant's parish*—26 *Hen. 8, c. 3—Ecclesiastical Fees Act, 1867 (30 & 31 Vict. c. 135)—Tables of Ecclesiastical Fees, London Gazette, March 19, 1896, and June 2, 1908—Canons 86 and 125 of Canons of 1603.*

Except in those archdeacons where by arrangement with the Ecclesiastical Commissioners procurations in respect of the archidiaconal procurations are not required to be paid by the clergy, the incumbents of parishes cited to attend the annual visitation of the archdeacon within whose jurisdiction their benefices are situated, if not otherwise exempt, are legally bound to pay procurations to the archdeacon at the customary rate, notwithstanding that the archdeacon has not personally visited the parish in respect of which the procurations are claimed either personally or by deputy, and although the visitation is held in another parish or in the cathedral of the diocese and for a number of parishes collectively.

The Archdeacon of Exeter claimed in a civil suit brought against the incumbent of a parish within his archdeaconry a procuration of ten shillings in respect of his annual visitation in that year held for a number of parishes within the archdeaconry, including the deft.'s parish, on May 8, 1911, in a parish of which the deft. was not the incumbent and in the cathedral of the diocese. The deft. was cited to attend the visitation, but did not appear at it or pay the sum claimed from him. At the hearing it appeared that no arrangement had been made with the Ecclesiastical Commissioners under which procurations in respect of the archdeacon's visitation would not be required to be paid, and that ten shillings was the amount at which the procurations in kind formerly payable to the

**ECCLESIASTICAL LAW**—*continued.*

archdeacon in respect of the deft.'s parish had been commuted:

*Held*, that the deft. was legally liable to pay to the promovee the customary procuration of ten shillings due and payable to him as archdeacon in respect of his visitation in 1911, notwithstanding that the archdeacon had not visited the deft.'s parish either personally or by deputy, but had held his visitation outside the deft.'s parish and for a number of parishes at one and the same time.

*Held*, also, that the Ecclesiastical Fees Act, 1867, and the Tables of Fees thereunder afforded no defence to the suit, as the fees under that Act, so far as they relate to visitations, are confined to fees payable by the churchwardens of parishes in cases where they have funds to pay them, and are not fees which affect, or are substituted for, procurations payable by the incumbents of parishes.

The Court ordered that as long as the deft. remained beneficed in the benefice of which he was incumbent at the date of the judgment in the suit, he should pay to the Archdeacon of Exeter for the time being the annual sum of ten shillings in respect of procurations due and payable by him to the archdeacon in respect of the archidiaconal visitations from and inclusive of the year 1912 and onwards. **THE ARCHDEACON OF EXETER v. GREEN**

**Consistory Court of Exeter [1913] P. 21**

— Consecration.

*See* CHARITY—Hospital Chapel.

— Curates—Employment.

*See* INSURANCE (NATIONAL).

*Faculty—Application to intervene after expiration of time for appealing.*

The Consistory Court of London granted a faculty for the erection of a rood screen, a new altar, and certain structural alterations in Grosvenor Chapel, but refused a faculty for a proposed baldacchino. After the time for appealing from that decision had expired, an application was made by a parishioner for leave to intervene and to be added as a respondent for the purpose of appealing to the Court of Arches from the decision of the Consistory Court:—

*Held*, that the application must be refused, as the faculty had issued and there was no cause before the Court in which an appearance could be entered. *In re GROSVENOR CHAPEL, SOUTH AUDLEY STREET (No. 2)*

**Consistory Court of London, 29 T. L. R. 411**

*Faculty—Parish church—Picture of Crucified Saviour—Opposition of parishioners—Faculty for removal.*

The rector of a parish placed a picture of the crucified Saviour near the pulpit in the parish church without consulting the churchwardens or the congregation. The vestry resolved by 37 votes to 27 that the parishioners should apply for a faculty to remove the picture:—

*Held*, on an application for a faculty to confirm the rector's action, that as the introduction of such a picture had not been sanctioned by authority, and as it had not been shewn by the petitioners that there was a general desire on

**ECCLESIASTICAL LAW—continued.**

the part of the churchgoing parishioners for its introduction, a faculty must be decreed for the removal of the picture. **HUDSON AND ANOTHER v. FULFORD** Consistory Court, 30 T. L. R. 32

*Jurisdiction—Criminal suit under Clergy Discipline Act, 1892 (35 & 36 Vict. c. 32), ss. 2, 12, 13—Immoral act—Offence against the laws ecclesiastical being an offence against morality and not being a question of doctrine or ritual—Canons of 1603, canons 75 and 109—Writing and sending by a clergyman of an obscene and indecent letter to an unmarried woman—Offence justiciable under Clergy Discipline Act, 1892—Remission of cases—Clergy Discipline Act Rules, 1892, rr. 72, 95—Practice—Costs.*

By s. 2 of the Clergy Discipline Act, 1892, if any clergyman, defined by s. 12 of the same Act to mean, unless the context otherwise requires, a clergyman not being the bishop of a diocese who is in holy orders in the Church of England, is alleged to have been guilty of any immoral act, immoral conduct, or immoral habit, or of any offence against the laws ecclesiastical being an offence against morality and not being a question of doctrine or ritual, he may be prosecuted by the bishop of the diocese and tried in the Consistory Court of the diocese in which he holds preferment in accordance with the prescribed procedure subject as in the same section mentioned, whilst s. 5 of the same Act provides that a complaint under the Act for an offence shall not be made after five years from the date of the offence or of the last of a series of acts alleged as part of the offence, with an exception in cases of conviction by a temporal Court.

The incumbent of a parish—a married man—was charged in a criminal suit instituted under the Clergy Discipline Act, 1892, with having within five years then last past been guilty of immoral acts, immoral conduct, and of offences against the laws ecclesiastical being offences against morality in that he wrote and sent by post addressed to A. B., an unmarried woman, then or lately a parishioner of and resident in the parish, an obscene and indecent letter. The deft. appeared in the suit and brought in a defence which, after admitting and deeply regretting the writing of the letter and pleading that at the time the deft. wrote it he had not had control over his feelings and was unable to appreciate the meaning of what he was writing, submitted that the letter was not in itself sufficient to constitute an offence under the Clergy Discipline Act, 1892. At the hearing of the suit in the Consistory Court of the diocese in which the deft. held preferment evidence in support of the charge was given by witnesses for the prosecutor, but the judge of the Consistory Court after hearing arguments, without any evidence having been adduced on behalf of the deft., dismissed the prosecution on the ground that the charge was not one maintainable under the Clergy Discipline Act, 1892. The prosecutor appealed to the Arches Court of Canterbury:—

*Held*, that the act charged against the deft. was “an immoral act” within the meaning of those words in s. 2 of the Clergy Discipline Act, 1892, and constituted an offence justiciable under that Act.

**ECCLESIASTICAL LAW—continued.**

*Held*, also, that, assuming the act charged against the deft. was one for which he might have been prosecuted in a temporal Court, the fact that no such prosecution had taken place would not have been a bar to the proceedings in the Court below.

The writing and sending by a clergyman of an obscene and indecent letter to an unmarried woman is an offence for which the clergyman can be tried under s. 2 of the Clergy Discipline Act, 1892, within five years of the date of the offence.

Observations as to the procedure to be followed in cases where the dismissal of a prosecution under the Clergy Discipline Act, 1892, is claimed on the ground that the charges under that Act are not maintainable in respect of matter of law. **BISHOP OF ELY v. CLOSE** — Arches Court of Canterbury [1913] P. 184; [1913] W. N. 249; 29 T. L. R. 668

—Tithe—Bankruptcy of incumbent—Sequestration of benefice—Tithes paid under mistake of fact to sequestrator appointed by bishop—Payment by bishop to trustee in bankruptcy.  
*See* **TITHE RENT-CHARGE.**

**EDINBURGH**—Loan—Burgh—Issue of redeemable stock by municipal corporation—*“Realeasable.”*  
*See* **SCOTTISH LAW.**

**EDINBURGH CORPORATION STOCK ACT, 1894.**  
*See* **SCOTTISH LAW.**

**EDINBURGH IMPROVEMENT AND TRAMWAYS ACT, 1896.**  
*See* **SCOTTISH LAW.**

**EDUCATION.**  
*See* **SCHOOL.**

—Statute—Construction—Exemption from taxes and assessments—Education expenses.  
*See* **LONDON—Rates.**

**EDUCATION ACTS.**  
*See* **SCHOOL.**

**EJUSDEM GENERIS.**  
*See* **TITHE RENT-CHARGE—Transfer of Townships.**

**ELECTRIC LIGHTING—Agreement between two electric supply companies—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 11, 19—London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 3—Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 14, sub-s. 1.**

By the London Electric Supply Act, 1908, electrical supply cos. were authorized to enter into and carry into effect, with the approval of the Board of Trade, any agreement for mutual assistance or for association with each other in regard to, inter alia, the giving and taking of a supply of electrical energy and the distribution and supply of the same so taken and for the management and working of any part of their undertakings.

**ELECTRIC LIGHTING—continued.**

Two electrical supply cos. obtained statutory powers to supply electrical energy within the City of Westminster and at the expiration of a certain period the City of Westminster had the right to acquire the undertakings of the respective cos. One of the two cos., the respondents, supplied within the district of their operations electricity on the system of continuous current; the other co., the appellants, supplied electricity on the principle of alternating current.

In 1910 an agreement was come to by which the respondent co. was to manage the appellants' undertaking in the Westminster area, receiving and retaining all amounts due for energy consumed by the appellants' customers therein. The appellants were to supply to the respondents all alternating current required by the appellants' customers in Westminster. The respondents were to pay to the appellants a fixed annual sum until the year 1931, when the undertakings of both parties might be acquired by the London County Council, and in the event of the purchase price of the appellants' undertaking being less than a certain sum the respondents were to make up the deficiency. The question between the parties was (1.) whether on the construction of that agreement in view of the powers granted by the Electric Lighting Acts the respondents were entitled to reduce the working of the appellants' undertaking by soliciting persons, who were entitled to apply and did apply to the appellants to supply them with electricity, to take their supply from the respondents instead; and (2.) whether under the terms of the appellants' Provisional Order, 1889, the respondents were entitled to claim a supply from the appellants, and having acquired the right to manage the appellants' undertaking as well as their own had an option to dictate to consumers which supply they should have:—

*Held*, that the respondents were under a statutory obligation so to manage the appellants' undertaking as not to lessen its receipts nor interfere with the consumers' right to be supplied with alternating current; and further that they could do nothing which would be likely to decrease the value of the appellants' undertaking, whenever it should be acquired by the City of Westminster, although they had contracted with the appellants that if the purchase price paid was below a certain sum they should be answerable to make up the price paid by the City of Westminster to that sum.

Decision of C. A. (affirming a judgment of Joyce J.) reversed. *LONDON ELECTRIC SUPPLY CORPORATION, LD. v. WESTMINSTER ELECTRIC SUPPLY CORPORATION, LD.*  
- H. L. (E.)  
11 L. G. R. 1046

*Connecting two areas of supply—Connection already existing—London Electric Supply Act, 1908 (8 Edw. 7, c. clxxvii.), s. 4, sub-s. 2.*

Motion by the plts. (who were the highway authority for the metropolitan borough of Battersea) for an injunction to restrain the defts., who were "an authorized undertaker" within the London Electric Supply Act, 1908, from laying electric mains in any street or place within the plts.' borough in order to connect two areas (Wandsworth and Southwark) which the defts.

**ELECTRIC LIGHTING—continued.**

were authorized to supply with electrical energy. The injunction was asked for on the ground that those two areas were (and had for many years been) already connected.

Sect. 4, sub-s. 2, of the London Electric Supply Act, 1908, provides that "an authorised undertaker . . . may . . . by means of electric mains make a connection between any two or more areas which that authorised undertaker . . . is authorised to supply . . .":—

*Held*, affirming the decision of Joyce J., that the section did not authorize one connection only, but that connections might be made between two areas from time to time as required. *BATTERSEA BOROUGH COUNCIL v. COUNTY OF LONDON ELECTRIC SUPPLY CO., LD.* - C. A.  
[1913] 2 Ch. 248; 82 L. J. (Ch.) 500; 11 L. G. R. 1126; 108 L. T. 938; [1913] W. N. 168; 77 J. P. 325; 29 T. L. R. 561

**ELECTRIC POWER—Rentals—Covenant for rental—Construction—Transfer of land and water for generating electricity—Rental varying with amount of electrical horse-power generated and used and sold—Appeal from Ontario.**

ATT.-GEN. FOR ONTARIO v. CANADIAN NIAGARA POWER CO. - P. C. [1912] A. C. 852;  
82 L. J. (P. C.) 18; 107 L. T. 629

**ELEMENTARY EDUCATION ACT, 1870.**

See SCHOOL.

**ELEMENTARY SCHOOL.**

See SCHOOL.

**EMPLOYER AND WORKMAN.**

See MASTER AND SERVANT and WORKMEN'S COMPENSATION.

**EMPLOYER'S LIABILITY—Insurance company—Winding-up—Current policies—Employer's liability policies—Contingent liabilities—Contingent claims maturing after winding-up order—Breach of contract—Measure of damages.**

See COMPANY—WINDING-UP—Proof.

**ENGINEER—Building contract—Arbitration clause—Reference to building owner's engineer—Disqualification—Dispute involving examination of engineer—Staying proceedings.**

See ARBITRATION—Building Contract.

**ENTERING—Breaking and entering—Knowledge of owner of premises.**

See CRIMINAL LAW—Breaking and Entering.

**EQUITABLE MORTGAGE.**

See MORTGAGE.

**ESTATE DUTY.**

See REVENUE—Estate Duty.

**ESTATE PUR AUTRE VIE—Policies on life of cestui que vie—Premiums, whether payable out of capital.**

See CONVERSION.

**ESTATE TAIL**—*Barring—Common recovery—Tenant to the præcipe—Seisin of—Disseisin of tenant for life—Proof of disseisin.*

In order that a common recovery should have been effective to bar an estate tail, the tenant to the præcipe must have been seised of the lands for an estate of freehold, either by right or by wrong. The presumption of law is that seisin follows the title, and the Court will not presume disseisin of a tenant for life for the purpose of upholding a recovery purporting to have been suffered by a tenant in tail in remainder.  
**WITHAM AND BETT v. NOTLEY. SAME v. SLOANE** - - - **C. A. [1913] 2 I. R. 281**

— Will—Legal devise—Technical words—A. and “his issue male in succession”—Words of explanation—Intended devolution explained.  
*See WILL—Devise.*

**ESTOPPEL**—Bank—Crossed cheque—Payment—Exchange of cheques—Ostensible authority.  
*See BANKER.*

— Deposit of securities.  
*See BANKER.*

— Owner by.  
*See LANDLORD AND TENANT—Tenancy.*

**ESTOVERS**—Rights of common—Turbary—Nuisance—Abatement—Excessive trespass—Cutting down trees—Injunction—Damages.  
*See COMMON.*

## EVIDENCE.

*Appeal. See APPEAL—Court of Appeal.*

*Bankers' Books, col. 210.*

*Bankruptcy. See BANKRUPTCY—Fraudulent Preference.*

*Collateral Facts, col. 210.*

*Copy. See below, Public Document.*

*County Court. See COUNTY COURT—Appeal.*

*Criminal Law. See CRIMINAL LAW—Evidence.*

*Damage. See FATAL ACCIDENTS ACT, 1846.*

*Deceased Person, Statements by, col. 210.*

*Divorce. See DIVORCE.*

*Expert Witness. See PATENT—Infringement.*

*Fraud. See FOREIGN JUDGMENT.*

*Maps. See MARKET.*

*Market. See MARKET.*

*Marriage, col. 211.*

*Parliament. See PARLIAMENT.*

*Passing-off. See PASSING-OFF.*

*Privilege, col. 211.*

*Public Document, col. 212.*

*Secondary Evidence, col. 213.*

## EVIDENCE—continued.

*Shipping. See SHIPPING—Collision. •*

*Will. See IRISH LAW—Registration.*

*Workmen's Compensation. See WORKMEN'S COMPENSATION.*

### Appeal.

— Schedule of evidence.

*See APPEAL—Court of Appeal.*

### Bankers' Books.

*Application for inspection in case of criminal libel—Bankers' Books Evidence Act, 1879 (42 Vict. c. 11), s. 7.*

In proceedings for criminal libel, in which they proposed to put in a plea of justification, the defts. applied for an order under the Bankers' Books Evidence Act, 1879, to inspect the banking account of the person they were alleged to have libelled:—

*Held*, that an order would not be made under those circumstances. **REX v. BONO AND ANOTHER. In re BANKERS' BOOKS EVIDENCE ACT, 1879** - - - **Div. Ct. 29 T. L. R. 635**

### Bankruptcy.

— Return of goods to creditor — Fraudulent preference — Motive of debtor — Collateral facts — Admissibility — Pressure.

*See BANKRUPTCY—Fraudulent Preference.*

### Collateral Facts.

*See BANKRUPTCY—Fraudulent Preference, and CRIMINAL LAW—Evidence.*

### Copy.

*See below, Public Document.*

### County Court.

*See COUNTY COURT—Appeal.*

### Criminal Law.

*See CRIMINAL LAW—Evidence.*

### Damage.

— Prospective loss.

*See FATAL ACCIDENTS ACT, 1846.*

### Deceased Person, Statements by.

— Interest pecuniary, Statements against.

*See WORKMEN'S COMPENSATION.*

*Report made in the course of duty—Company—Confidential report to, by agent—Admissibility of, in favour of shareholder on application to rectify register—Non-contemporaneous document.*

On a motion by a shareholder to rectify the register of members of a co. by removing the name of the applicant therefrom on the ground of misrepresentations in the prospectus of the co., the applicant tendered as evidence of untruths in the prospectus a report which had been made by an agent of the co. who was employed by the directors to inspect and report to them on the estates which had been acquired by the co.

**EVIDENCE (Deceased Person, Statements by)—**  
*continued.*

Objection was taken to the admissibility of the report as evidence, because the same was made one month after the inspection had taken place, the agent having been lying half that time unconscious in a hospital. He had died shortly before the motion came on for hearing :—

*Held*, that a document could not be admitted as evidence after the death of the writer, even though made in the course of his duty, unless it was contemporaneous; and that in the present case the report in question came within that well-established rule.

*Doe v. Turford* (1832) 3 B. & Ad. 890, applied.

Decision of Warrington J. [1912] W. N. 192, affirmed. *In re DJAMBI (SUMATRA) RUBBER ESTATES, LD.* - C. A. 107 L. T. 631; 29 T. L. R. 28; 57 S. J. 43

**Divorce.**

*See* DIVORCE.

**Expert Witness.**

*See* PATENT—*Infringement*.

**Fraud.**

Foreign judgment — Action — Proceedings contrary to natural justice—Defence of fraud — Exclusion of evidence of fraud.

*See* FOREIGN JUDGMENT.

**Maps.**

— Market—Copies from Record Office.

*See* MARKET.

**Market.**

— Maps.

*See* MARKET.

**Marriage.**

*Divorce—Practice — Marriage — Proof of marriage—“Irregular” marriage in Scotland—Extracted from register book of marriages—Marriage Law (Scotland) Amendment Act, 1856* (19 & 20 Vict. c. 96), s. 2.

*DREW v. DREW* - *Evans* P. 81 L. J. (P.) 85; 107 L. T. 528; 28 T. L. R. 479

*See* DIVORCE.

**Parliament.**

Test roll of House of Commons—Return book

—Return of writ of election—Official copy of division lists—Partnership deed.

*See* PARLIAMENT.

**Passing-off.**

*See* PASSING-OFF.

**Privilege.**

*Production of partnership deed by one of several partners.*

Each of several members of a firm signed a copy of the partnership deed and each partner had a copy of the deed. In an action for penalties against one of the partners :—

*Held*, that a partner of the deft. was compellable to produce his copy of the partnership

**EVIDENCE (Privilege)—continued.**

deed upon a subpoena duces tecum. *FORBES v. SAMUEL* (No. 2)

[1913] W. N. 177; 29 T. L. R. 544

*Restraint of publication—Documents improperly obtained—Secondary evidence—Copies.*

It is no answer to an action brought for an injunction to restrain publication of copies of privileged documents to say that the copies, although improperly obtained, will be wanted in pending proceedings to prove the contents of the original documents, which, owing to the privilege, cannot be produced.

P. was a bankrupt and his discharge was opposed by, amongst others, the plt. P. obtained by a trick letters which had been written by the plt. to his solicitor and were therefore privileged. P. had these letters copied and proposed to use them in the bankruptcy proceedings as secondary evidence of the contents of the letters which, owing to privilege, he could not produce. The plt. brought an action for an injunction to restrain P. from disclosing the letters or the copies, and Neville J. made an order restraining him from doing so except in the bankruptcy proceedings :—

*Held*, that the fact that the copies, although improperly obtained, might be admissible as secondary evidence in the bankruptcy proceedings, was no answer to the action, and that the plaintiff was entitled to an absolute injunction without any exception. *ASHBURTON (LORD) v. PAPE* - C. A. [1913] 2 Ch. 469; 82 L. J. (Ch.) 527; 109 L. T. 381; [1913] W. N. 220; 24 T. L. R. 623; 57 S. J. 649

*See* PARLIAMENT—House of Commons.

**Public Document.**

*Non-parochial registers—Society of Friends — Births, marriages, and deaths — Digest — Certificates of recording clerk—Admissibility — Non-parochial Registers Act, 1840* (3 & 4 Vict. c. 92), ss. 6, 9.

The registers of births, marriages, deaths and burials kept by the Society of Friends prior to July 1, 1837, when the Births [Marriages] and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), came into operation, were not evidence at common law.

*Ex parte Taylor* (1820) 1 Jac. & W. 483, and *Whitbuck v. Waters* (1830) 4 C. & P. 375, applied.

On being deposited at Somerset House under the Non-Parochial Registers Act, 1840, these registers became statutory evidence under s. 6, but entries therein are only provable by production of the original registers or by a certificate under the seal of the General Register Office under s. 9.

A certificate certified by the recording clerk of the society as a true extract from the society's digest of those registers is inadmissible (a) on the above grounds and (b) on the ground that it is only an extract from a digest of registers that are still in existence. *In re WOODWARD. KENWAY v. KIDD*

*Swinfen Eady J.* [1913] 1 Ch. 392; 82 L. J. (Ch.) 230; 108 L. T. 635; [1913] W. N. 80

**EVIDENCE—continued.****Secondary Evidence.**

*Factory Acts—Abstract to be constantly affixed in factory—Proof of contents—Admissibility of secondary evidence—Factory and Workshops Act, 1901 (1 Educ. 7, c. 22), ss. 32, 128.*

On the prosecution of the respondents for employing a young person in their factory during meal time, contrary to s. 32 of the Factory and Workshops Act, 1901, the appellant, an inspector of factories, sought to give evidence of the contents of the printed abstract which was affixed in the factory in accordance with s. 128 of the Act and which included the notice specifying, as required by s. 32, the period of employment and times allowed for meals in the factory. The appellant contended that he was entitled to give secondary evidence of the contents of the abstract, notwithstanding that he had not given notice to produce it, as it was a document which by s. 128 was required to be constantly kept affixed in the factory and was therefore not a document which could be produced in court.

The justices held that the abstract could have been produced and was subject to the ordinary principles of the law of evidence, even although the respondents would, under the Act, be subject to a penalty if they removed it from the factory. They therefore refused to admit the secondary evidence and dismissed the case for lack of evidence as to the time fixed as the time allowed for meals.

The Div. Ct. held that the secondary evidence was admissible and allowed the appeal. *OWNER v. BEE HIVE SPINNING CO., LD.*

[1913] W. N. 289; [1914] 1 K. B. 105;  
30 T. L. R. 21

**Shipping.**

*Collision—Overtaking and overtaken vessels—Crossing vessels—Suction or interaction—"Swerve."*

*See SHIPPING—Collision.*

**Will.**

— Execution—Affidavit of attesting witness—Wills.

*See IRISH LAW—Will.*

**Workmen's Compensation.**

— Workmen's compensation—Statements against pecuniary interest—Knowledge.

*See WORKMEN'S COMPENSATION.*

**EXCHANGE—Bill of.**

*See BILL OF EXCHANGE.*

**EXECUTION**—Judgment creditor—Garnishee order absolute—Bankruptcy notice—"Execution stayed"—Secured creditor.  
*See BANKRUPTCY—Notice.*

— Ontario.

*See CANADA—Ontario.*

— Surrender of tenancy—Tenant remaining in possession—Claim by landlord for rent.  
*See LANDLORD AND TENANT—Tenancy.*

— Will—Evidence.

*See IRISH LAW—Will.*

**EXECUTOR—Administration—Retainer—Insolvent estate—Receiver—Executor surety for testator—Right of indemnity.**

An executor, who is surety for an unpaid debt of his testator, cannot exercise his right of retainer in respect of his liability as surety unless he pays the debt, and then only to the extent of the assets actually in his hands at the time he pays it. But an opportunity may be given him to pay the debt, if he has assets in his hands, in order that he may set up his right of retainer.

After the usual judgment in a creditors' action to administer the estate of a testator a receiver was appointed. The estate proved to be insolvent. One of the executors, who was surety for an unpaid debt of 3000l. of the testator's, claimed that his right to indemnity out of the estate created an equitable debt which entitled him to retain in respect of it certain legal assets which constituted the greater part of the outstanding personal estate of the testator:—

*Held*, that as the executor had not paid the debt for which he was surety, there was no debt in respect of which he could exercise his right of retainer. The claim was therefore disallowed.

The principle of *In re Orme* (1883) 50 L. T. 51, and *In re Harrison* (1886) 32 Ch. D. 395, applied.

*In re Giles* [1896] 1 Ch. 956, not followed.  
*In re BEAVAN.* DAVIES, BANKS & CO. v. BEAVAN. — Neville J. [1913] 2 Ch. 595;  
[1913] W. N. 278; 109 L. T. 538; 58 S. J. 31

*Administration—Retainer—Payment into Court—Assets—Constructive possession by legal personal representative—Two estates being administered in one action—Transference of fund from one estate to the other.*

The estates of A. and B. were administered in one action. The estate of B. (who was A.'s executor) was entitled to the residue of the estate of A. when ascertained. B.'s executor, who was a creditor of B., brought the action as executor and creditor on behalf of himself and all other creditors; and asserted his right of retainer in the statement of claim, and throughout the proceedings. A.'s estate was realized, and the money representing the proceeds was brought into Court. The executor of B. died pending the suit, which was continued by substituting his executors as plts. After A.'s estate had been realized, an order was made upon the application of the plts., directing an inquiry to ascertain what part of the funds in Court represented the residue of A.'s estate, and ordering the same to be transferred to the credit of B.'s estate, and it was declared that the plts. were entitled to exercise their right of retainer, as the executors of B.'s executor, in respect of the amount so ascertained, in discharge of the debt due to them from B.'s estate. *In re OLPHERTS.* OLPHERTS v. CORYTON (No. 2)

Barton J. (Ir.) [1913] 1 I. R. 381

*Administration—Retainer—Specialty and simple contract creditors—Hinde Palmer's Act, 1869 (32 & 33 Vict. c. 46).*

It has never been the practice in Ireland, in the administration of assets, to form two funds, one in respect of specialty debts, and the other in respect of simple contract debts,



**EXECUTOR—continued.**

for the purpose of postponing an executor's simple contract debt to specialty debts. The executor may retain his simple contract debt as against both specialty and simple contract creditors, inasmuch as, by Hinde Palmer's Act, both classes of creditors are made of equal degree as regards priority of payment in the administration of estates.

The ratio decidendi of the C. A. in England in *In re Samson* [1906] 2 Ch. 584, and the opinion of Neville J. in *In re Jennes* (1909) 53 Sol. Jo. 376, applied in support of the executor's right of retainer.

*Wilson v. Cozwell* (1883) 23 Ch. D. 764, and *In re Jones, Calver v. Laxton* (1885) 31 Ch. D. 440, not followed. **OLPHERTS v. CORYTON**

**Barton J. (Ir.) [1913] 1 I. R. 211**

*Carrying on business—Administration—Assets of testator—No power to carry on business—Business carried on by executors—Executors' right to indemnity—Rights of creditors of testator and subsequent creditors of executors—Knowledge—Acquiescence—Priority.*

The testator, a boiler maker, died in 1908, having appointed his wife and son executors of his will whereby he gave everything, subject to the payment of his debts, to his wife. The wife and son proved the will and continued to carry on the testator's business for four years as executors of the testator, although no power in that behalf was given to them by the will.

On Nov. 7 last three creditors of the testator obtained the ordinary decree in a creditor's action for the administration of the testator's estate and the appointment of a receiver. All the plts. knew that the testator's business was being carried on by the executors.

This was an application by creditors in respect of debts incurred in the carrying on of the business by the executors, for a declaration that the executors were entitled to an indemnity out of the assets for debts incurred in carrying on the business in priority to the original creditors of the testator, and that the applicants might have the benefit of that indemnity.

Joyce J. held, distinguishing *Dowse v. Gorton* [1891] A. C. 190, that the old creditors had not lost their priority. The executors had carried on the business for the benefit of themselves or one of them, and not for the benefit of the old creditors; no such arrangement nor any such state of things existed as would give the executors the right of indemnity claimed. The application must be dismissed. *In re OXLEY. JOHN HORNBY & SONS v. OXLEY* — **Joyce J. [1913] W. N. 356; 30 T. L. R. 170; 58 S. J. 138**

— **Devastavit** — **Administration** — **Creditor's action** — **Representative of deceased executor** — **Payment of beneficiaries more than six years before action.**

*See LIMITATIONS, STATUTES OF — Devastavit.*

*Liability for acting unreasonably—Vexatious and unjustifiable conduct—Costs thereby incurred.*

A testator devised his house and lands of D., which were registered under the provisions of the Local Registration of Title (Ireland) Act, 1891, to H. A. W., subject to the right of the

**EXECUTOR—continued.**

testator's wife to reside in certain rooms of the house, and on the condition that H. A. W. should reside in the house; should H. A. W. not reside in the house at D., the testator devised the house and lands to J. W. on like conditions, and he appointed H. A. W. and J. W. his executors, who proved the will. H. A. W. was a merchant carrying on business in the town of E., where at the time of the testator's death he resided with his family; and J. W. resided in England. There was evidence that after the testator's death H. A. W. usually slept in the house at D. and worked the lands, driving in each day to E. (distant about seven miles), where he continued to carry on his business. In the course of the administration of the testator's estate, J. W. required H. A. W. to give satisfactory evidence that he had complied with the condition in the will as to residence at D., which H. A. W. refused to do, save by alleging that he had done so, and was residing there. H. A. W. subsequently died, and J. W. refused to sign an assent to the devise, or to join in a conveyance of the lands to a purchaser, alleging that the conditions of the will had not been complied with. The present action was then brought against J. W. by the executors of H. A. W., claiming a declaration that the latter was in his lifetime rightly in possession of the lands of D., an order that J. W. should do all acts necessary to have the plts. registered as owners under the Local Registration of Title (Ireland) Act, 1891, and claiming costs against J. W.; whereupon the latter offered to do whatever was necessary in his capacity of surviving executor to assent to the devise to H. A. W., on his being paid his proper charges and expenses. The plts., however, claimed that J. W. was bound to indemnify them against the costs already incurred in the action, with which they proceeded:—

Held by the C. A. (Ir.), that the action of J. W. in refusing to assent to the devise was not unreasonable, and that he was entitled to his costs of the action. **HENRY MARTIN AND ROBERT JOHNSON v. JAMES AND ALEXANDER WILSON** — **C. A. (Ir.) [1913] 1 I. R. 470**

*Power to pledge personal chattels—Pledge by one of two executors and trustees—Validity—Payment of debts—Passing of residuary account—Lapse of time—Assent to trusts of will.*

A testator by his will, after appointing two persons executors and trustees and giving pecuniary legacies, gave his residuary estate to his trustees upon trust for sale and distribution as therein mentioned. Fourteen years after the testator's death one of the executors, without the knowledge of his co-executor, pledged certain plate forming part of the testator's residuary estate with a firm of pawnbrokers, who had no notice that he was not the absolute owner thereof, and misapplied the money so raised. All the debts and legacies, so far as was known, were paid, and the residuary account was passed, within one year of the testator's death, but the residuary estate had not been completely distributed. On the death of the pledgor, the transaction was discovered and an action was brought by the co-executor and a new trustee against the pawnbrokers to recover the plate:—

**EXECUTOR**—*continued.*

*Held*, that the proper inference to be drawn from the facts was that at the date of the pledge the executors had assented to the trust dispositions taking effect and held the plate not as executors but as trustees; that, therefore, the deceased executor had no power to pledge the plate and the existing trustees were entitled to recover it.

Decision of C. A. [1912] 1 Ch. 451, affirmed. **GEORGE ATTENBOROUGH & SON v. SOLOMON**

**H. L. (E.) [1912] A. C. 76 : 82 L. J. (Ch.) 178 ; 107 L. T. 833**

— Probate — Revocation — Supposed intestacy — Grant of letters of administration — Sale of real estate by administratrix — Subsequent discovery of will appointing executors — Invalidity of purchaser's title.

*See PROBATE.*

*Promise of testator to pay for alterations in chapel—Contract entered into on faith of promise—Liability of testator's estate.*

A testator promised to defray the cost of certain alterations in a chapel in which he was interested, provided the total expense did not exceed a certain amount. Estimates were obtained and submitted to the testator, and thereafter the provost of the chapel entered into a formal contract for the work. The testator died after some of the work had been executed, but before a contract for the remainder had been entered into :—

*Held*, that the testator's estate was liable for the cost of so much only of the work in respect of which a contract had been entered into before the testator's death. *In re* **VISCOUNT MOUNTGARRET. INGILBY v. TALBOT**

**Swinfen Eady J. 29 T. L. R. 325**

**EXECUTORY CONTRACT**—Infant—Necessaries — Benefit — Consideration received — Liability.

*See* **INFANT—Contract.**

**EXECUTORY GIFT**—Merger—Tenancy for life and freehold reversion—Executory gift over — Conveyance of life estate — Intention.

*See* **MERGER.**

— Settled estate—Will—Construction—Tenant in fee with executory gift over—Mining lease—Quality of estate.

*See* **SETTLED LAND.**

**EXEMPTION**—Rates.

*See* **LONDON—Rates.**

**EXONERATION**—Will — Construction — Charge of legacies and debts on specific realty and personality in foreign country — Mixed fund — Non-exoneration of residuary personality.

*See* **WILL—Charge.**

**EXPECTANCY**—Covenant to settle after-acquired property—"Interest in expectancy."

*See* **SETTLEMENT—Covenant to Settle.**

**EXPLOSIVES**—Supply of—Coal mine—"Actual net cost to the owner."

*See* **MINES—Coal Mines.**

**EXPULSION**—Member—Trade union.

*See* **TRADE UNION.**

**EXTRADITION**—*Habeas corpus*—Jurisdiction of committing magistrate—Evidence—*Extradition Act, 1870* (33 & 34 Vict. c. 52), ss. 2, 3.

Rule nisi for a writ of *habeas corpus* calling upon the Governor of Brixton Prison to bring up one Pietro Servini, who had been committed by a metropolitan police magistrate sitting at Bow Street, for extradition to Italy.

The rule nisi was moved for on the ground (*inter alia*) that no proof was given before the committing magistrate of the Order in Council applying the Extradition Act to Italy.

The Div. Ct. discharged the rule on the ground that *habeas corpus* ought not to be granted in a case where there had merely been an omission to give formal evidence of some fact necessary to give jurisdiction to the committing magistrate, there being no question as to the existence in fact of jurisdiction. Rule discharged. **REX v. GOVERNOR OF BRIXTON PRISON. Ex parte SERVINI** — Div. Ct. [1913] **W. N. 302 : [1914] 1 K. B. 77 ; 30 T. L. R. 35 ; 58 S. J. 68**

*Habeas corpus, Second writ — Grounds of detention of prisoner—Extradition—Trial and discharge of prisoner — Subsequent proceedings for extradition—Previous extradition proceedings in India with respect to same charge—Applicant discharged owing to informality in proceedings—Prima facie case—"Tried and discharged"—Money won by cheating at cards—Obtaining money by false pretences—Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 6—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 17—Extradition Treaty with Germany, 1872, Arts. II., IV., and XV.*

*Ex parte* **STALLMANN. REX v. BRIXTON PRISON (GOVERNOR)** — Div. Ct. [1912] **3 K. B. 424 ; 82 L. J. (K. B.) 8 ; 23 Cox, C. C. 192 ; 107 L. T. 553 ; 77 J. P. 5 ; 28 T. L. R. 572**

*Requisition for surrender—Arrest of accused—Requisition by "the diplomatic agent of his country"—Extradition Treaties with France, 1876 and 1909.*

**REX v. GOVERNOR OF BRIXTON PRISON. REX v. GOVERNOR OF HOLLOWAY PRISON** — Div. Ct. [1912] **2 K. B. 578 ; 81 L. J. (K. B.) 912 ; 23 Cox, C. C. 161 ; 107 L. T. 408 ; 76 J. P. 810 ; 28 T. L. R. 405**

**FACTORY ACTS.**

*See* **PRINCIPAL AND AGENT.**

**FACTORY AND WORKSHOP**—Abstract of Factory and Workshop Act—Secondary Evidence.

*See* **EVIDENCE—Secondary Evidence.**

*Company—"Occupier" of factory—Whether limited company can be proceeded against for breach of Act—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 63.*

A limited co., as the occupier of a factory, may be proceeded against for a contravention of s. 137 of the Factory and Workshop Act,

**FACTORY AND WORKSHOP**—*continued.*

1901, in employing persons contrary to the Act. *REX v. GAINSFORD AND OTHERS, JJ.*

Div. Ct. 29 T. L. R. 359

"*Manufacturing process*"—*Carpet-beating carried on in premises—Non-textile factory—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 1, sub-s. 3; s. 149, sub-s. 1 (b), and Sched. VI., clause 28.*

*JOHNSTON v. LALONDE BROTHERS & PARHAM* -

Div. Ct. [1912] 3 K. B. 218 ;

81 L. J. (K. B.) 1229 ; 76 J. P. 378

*School—Laundry carried on incidentally to purposes of a public institution—"Public institution"—Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), s. 1.*

*ROYAL MASONIC INSTITUTION FOR BOYS (TRUSTEES) v. PARKES* -

Div. Ct. [1912]

3 K. B. 212 ; 82 L. J. (K. B.) 33 ; 10 L. G. R.

376 ; 22 Cox, C. C. 746 ; 106 L. T. 809 ; 76

J. P. 218 ; 28 T. L. R. 355

See EVIDENCE—Secondary Evidence.

**FAIRS**—*Corporation—Town moor—Freemen's rights of herbage on moor—Temperance festival—Roundabouts and shows—Injury to herbage—Interlocutory injunction—Newcastle Town Moor Act, 1774 (14 Geo. 3, c. cv.), ss. 1—4, 7, 8, 10—Newcastle-upon-Tyne Improvement Act, 1870 (33 & 34 Vict. c. cxx.), ss. 6—8, 10, 11, 17, 19.*

By the Newcastle Town Moor Act, 1774, the right of depasturing two milch cows each on the Town Moor for the resident freemen and widows of freemen of the borough (known as the herbage right) was established, subject to such regulations for the improvement of the moor as were prescribed in the Act, which by s. 7 provided that no lease should be made of that part of the moor called Cowhill fair as should be necessary for holding the Cowhill fair, nor of that part of the moor called the race ground, nor any part of the moor where booths, stalls, etc., were erected during the holding of the said fairs or horse-races, but the same should be "preserved for fairs and races" as theretofore. By the Newcastle-upon-Tyne Improvement Act, 1870, a committee of stewards and wardens was constituted to act for and on behalf of the freemen and widows of freemen for all purposes relating to the Town Moor, and the committee and the corporation were empowered to enter into such arrangements as they might think fit for the appropriation of parts of the Town Moor for public purposes. Prior to 1882 horse-races were held on the Town Moor every year in the last week in June, known as the race week ; but in that year they were and ever since had been held in another place. In 1882 the committee and the corporation jointly gave permission for a temperance festival to be held on the race ground on the Town Moor during the race week, and also granted a licence to persons, who had in previous years attended the races, to attend the festival with their roundabouts and shows, and every year since then similar gatherings had been held on the Town Moor during the race week. In Mar., 1913, the committee and corporation granted the usual permission for the temperance festival to be held on the Town Moor during the race week in the following June, but the com-

**FAIRS**—*continued.*

mittee declined to concur with the corporation in granting a licence to the defts. to bring their roundabouts and shows on the Town Moor during the festival, on the ground (as the fact was) that the herbage on the site occupied by the roundabouts and shows at the festival in June, 1912, had been almost entirely destroyed by the heavy steam and motor engines used to draw the roundabouts, &c., on to the site, that it would take several years to restore the herbage, and that there would not be sufficient herbage for the freemen's cattle. The corporation nevertheless granted the defts. a licence as usual, and thereupon the committee issued a writ against the defts. to restrain them from injuring the herbage on the Town Moor by bringing roundabouts, &c., on to the moor, and moved for an interlocutory injunction. The corporation were not made defts. to the action, but passed a resolution instructing their town clerk to defend the action :—

*Held*, that the temperance festival was not "a fair" within the meaning of either of the Acts of 1774 and 1870, that there was nothing in those Acts which empowered the corporation to grant the licence to the defts., and that the freemen were entitled to the interlocutory injunction for which they asked. *WALKER v. MURPHY* - - - *Neville J. 77 J. P. 365*

**FALSA DEMONSTRATIO.**

See VENDOR AND PURCHASER and WILL.

**FALSE IMPRISONMENT**—*Defence to action for—Arrest without warrant by private individual—Felony for which plaintiff arrested not committed—Other felonies committed by some person other than plaintiff—Reasonable and probable cause to suspect plaintiff of having committed the other felonies.*

The action was brought to recover damages for false imprisonment and malicious prosecution.

The plt. was given into custody by the defts. for stealing a book entitled "Traffic," and although the defts., when they caused his arrest, were convinced that the person who stole "Traffic" was also guilty of other thefts, they did not cause the plt.'s arrest for these other thefts, but only for that theft of which they thought they had clear evidence. The deft. was committed for trial and acquitted of the charge of stealing the book "Traffic," the defence being that in taking the book he had no felonious intent, which the jury accepted.

The action was tried before the Lord Chief Justice and a special jury on Oct. 29 and 30. The jury, to whom the following questions were submitted, answered as follows :—(1) Did the defts. take reasonable care to inform themselves of the true facts of the case?—Yes. (2a) Did the defts. honestly believe that the plt. had stolen the book?—Yes. (2b) Did the defts. reasonably believe that the plt. had stolen moneys and stock (other than the book "Traffic") from the bookstall?—Yes. (3) Were the defts. in instituting the criminal proceedings actuated by malice?—No. (4) What damages for false imprisonment?—75l. The Lord Chief Justice ruled that there was not an absence of reason-

**FALSE IMPRISONMENT—continued.**

able and probable cause for the prosecution. Thus the plt. failed, and the defts. succeeded upon the claim for malicious prosecution, and it left the claim for false imprisonment. Both parties claimed judgment upon the verdict of the jury. The Lord Chief Justice had no doubt that the defts. had reasonable and probable cause for suspecting the plt. of having stolen money or books other than the book "Traffic," when they gave the plt. into custody. It was not disputed by the plt. that a felony, or most probably a series of felonies, had been committed. It was admitted by the defts. at the trial before the Lord Chief Justice, that the plt. had not stolen the book "Traffic."

The L.C.J. held that as the felony for which the defts. gave the plt. into custody had not in fact been committed, the very basis upon which they must rest any defence of lawful excuse for the wrongful arrest of another failed them in this case. Although he was quite satisfied not only that they acted with perfect bona fides in the matter, but were genuinely convinced after reasonable inquiry that they had in fact discovered the perpetrator of the crime, it now turned out that they were wrong, and it could not be established that the crime had been committed for which they gave the man into custody; they had failed to justify in law the arrest, and there must therefore be judgment for the plt. for the 75*l.* damages which had been awarded, with the costs of the action. The defts. to have such costs as were attributable to the issue of malicious prosecution. Judgment for plt. **WALTERS v. W. H. SMITH & SON, LD.**

**ISAACS C.J. [1913] W. N. 359; 30 T. L. R. 158**

*Miner in coal mine—Refusal to work—Refusal of employers to afford facilities for leaving the mine.*

The plt., a miner, descended a coal mine at 9.30 A.M. for the purpose of working therein for his employers, the owners of the colliery, for a period of time which under his contract of employment would expire at 4 P.M. On arriving at the bottom of the mine the plt. was ordered to do certain work. He wrongfully refused to do the work, and at 11 A.M. requested to be taken to the surface in a lift, which was the only way in which he could leave the mine. By the orders of his employers he was not permitted to use the lift until 1.30 P.M., although the lift had before that time been available for the carriage of the plt. to the surface. The plt. was in consequence obliged to remain in the mine against his will until 1.30 P.M. In respect of this detention the plt. sued his employers for damages for false imprisonment:—

Held by Buckley and Hamilton L.JJ., Vaughan Williams L.J. dissenting, that the action could not be maintained, on the ground that the refusal of the defts. to afford the plt. facilities for leaving the mine at a time when as between them and the plt. they were under no contractual obligation to do so did not in law constitute an imprisonment of the plt.

Held by Vaughan Williams L.J. that the true inference to be drawn from the facts was that the defts. had caused the plt. to be detained in the mine in order to punish him for his refusal

**FALSE IMPRISONMENT—continued.**

to work, and that there had been a false imprisonment of the plt.

Judgment of Pickford J. reversed. **HERD v. WEARDALE STEEL, COAL AND COKE CO., LD**  
**C. A. [1913] 3 K. B. 771; 82 L. J. (K. B.) 1354; 109 L. T. 457**

**FARM**—Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Agricultural ditch—Injunction—Damages.  
*See LOCAL GOVERNMENT—Drainage.*

**FARMER**—Workmen's compensation—Workman also carrying on occupation of farmer—Whether damages recoverable by workman in capacity of farmer from third party.

*See WORKMEN'S COMPENSATION—Remedies.*

**FATAL ACCIDENTS ACT, 1846**—*Damage—Evidence—Prospective loss—Fatal Accidents Act, 1846 (9 & 10 Viet. c. 93), ss. 1, 2.*

It is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plt. at or before the date of the death, provided that the plt. had a reasonable expectation of pecuniary benefit from the continuance of the life.

Dicta of Dowse B. in *Bourke v. Cox and Macroom Ry. Co.* (1879) 4 L. R. Ir. 682, and of Lord Morris, when Chief Justice, in *Holleran v. Bagnell* (1880) 6 L. R. Ir. 333, overruled.

Where, therefore, an action was brought by a father under the Fatal Accidents Act, 1846, for damages for the loss of a daughter, aged sixteen, who was killed by the negligence of the defts., and it was proved that at the date of her death the deceased, who lived with her parents, was nearing the completion of her apprenticeship as a dressmaker and was likely in the near future to earn a remuneration which might quickly have become substantial:—

Held, that there was evidence of damage upon which the jury could reasonably act.

Decision of the C. A., 106 L. T. 715, affirmed. **TAFF VALE RY. CO. v. JENKINS - H. L. (E.) [1913] A. C. 1; 82 L. J. (K. B.) 49; [1912] W. N. 241; 29 T. L. R. 19; 57 S. J. 27**

**FEES**—Counsel.

*See COUNSEL.*

— Ecclesiastical fees.

*See ECCLESIASTICAL LAW.*

**FENCING**—Negligence—Landowner—Unfenced land—Leave and licence to enter—Children—Injury—Liability.

*See NEGLIGENCE—Unfenced Land.*

— Streets.

*See LOCAL GOVERNMENT—Streets.*

**FERRY**—Disturbance—Ferry from point to point—Change of circumstances—New traffic.

The plts. claimed (inter alia) (1.) a declaration that they were entitled to an ancient ferry mentioned in the statement of claim, and (2.) an injunction to restrain the defts., their servants and agents, from carrying foot-passengers for hire across the river Thames,

**FERRY—continued.**

Over, upon, within, or near the said ancient ferry and from disturbing the plts. in their enjoyment thereof.

The defts. admitted that a ferry in fact existed between the points A and B, but denied it was a franchise ferry. They also admitted that they carried on a ferry, but alleged that the ferry so carried on by them was more than a quarter of a mile distant from the ferry between the points A and B, and served a different neighbourhood on both sides of the river, and was in respect of a totally new traffic, namely, that created by the opening by the London County Council of Marble Hill Park:—

*Held*, that the plts. had established their claim to a franchise of a ferry between the points A and B, mentioned in their particulars. Passages in the judgments in *Newton v. Cubitt* (1862) 12 C. B. (N.S.) 32, 58, 59, and *Hopkins v. Great Northern Ry. Co.* (1877) 2 Q. B. D. 224, 231, referred to. The question to be determined was whether the defts.' ferry was a colourable diversion only of the plts.' ferry, or whether it was bona fide established for the purpose of accommodating and did accommodate a traffic substantially new in character and different from that which the old ferry was established to serve. In order to determine this question in favour of the defts. it was not sufficient to shew that the volume of traffic had increased, as, for example, by reason of the increase in the population of the riverside places; they must establish that the traffic served by them was a substantially new traffic necessarily demanding new facilities.

*Held*, that there had sprung up a substantially new traffic different in character from that served by the old ferry, and that the defts.' ferry was started bona fide to meet a genuine demand on the part of the public in connection with this new traffic. Under those circumstances it would be an undue extension of the plts.' monopoly, if the Court were to prevent the defts. from continuing to carry persons across the river as they have been doing. There must be a declaration that the plts. were entitled to the ancient ferry, but the rest of the action failed and must be dismissed with costs. **EARL OF DYSART v. HAMMERTON & Co.**

**Warrington J. [1913] W. N. 125 ; 29 T. L. R. 464 ; 57 S. J. 501**

*Disturbance—Ferry from vill to vill or point to point—Change of circumstances.*

Between the thirteenth and fifteenth centuries various grants were made by the Crown of the manor of Lothingland on the west side of the river Yare with (amongst other things) ferries belonging to the manor, and during that period the lords of the manor were exercising a right of ferry across the river Yare in respect of the vill or vills of Gorleston and Little Yarmouth or South Town in the manor of Gorleston, in the hundred or half hundred of Lothingland. A similar right was during this period exercised from the east bank by the bailiffs of Great Yarmouth. Since the beginning

**FERRY—continued.**

of the fifteenth century the lords of the manor of Lothingland received the tolls and exercised the ferriage rights from and to both sides of the river Yare.

For some time before 1834 the plts.' predecessors in title carried persons across the river Yare only at a point described as the lower ferry. In 1829 and 1834 proceedings were taken against one Ebdon by a predecessor in title of the plts. for disturbing the ferry, and in those proceedings respectively 1s. damages and an interim injunction were awarded to the plts.

In 1834 a memorial was presented to a predecessor in title of the plts. by occupiers and owners of property in Great Yarmouth and South Town requesting him as proprietor of the ferry to provide an additional ferry boat to ply in the river in the vicinity of the Armoury at South Town. Thereupon the plts.' predecessors in 1834, established another crossing place at a point known as the upper ferry and acquired land on each side of the river for the purpose of making landing places. Since that date the business of carrying across the river was carried on at these two places between the vill of Great Yarmouth on the east side of the river and the vill or vills of Gorleston and Little Yarmouth or South Town on the west. There were no other fixed landing places or ferry stations except those at the upper and lower ferries.

By several local statutes protection was given to the ferries of a nature more consistent with the existence of an exclusive right of ferrying between the above-mentioned vills than with a point to point ferry.

The plts. relied upon the grants, user, proceedings, documents and statutes mentioned above as evidence of a prescriptive title to or alternatively of a lost grant of a vill to vill ferry, and as evidence that there had been a transfer of their original moiety of the ferry rights from the bailiffs of Yarmouth to the plts.' predecessors in title.

In 1510 the manor of Gorleston was granted by Henry VIII. to E. Jerningham and his wife in tail with all franchises, &c., and from that time the right of ferry was exercised by Jerningham and his successors, and though the title of the plts. was not strictly traced to this grant of the manor, it was probably the foundation of their title:—

*Held*, that the inference ought to be drawn that the grant to the plts.' predecessors in title was a grant of a vill to vill ferry, and not merely a point to point ferry, whether it was derived from the grant of 1510 or from a lost grant.

Before 1867 the number of passengers carried was possibly substantial but probably not very great, but after that year it increased steadily and largely in consequence of alterations in the manner of carrying on the fishing industry and the increase in the number of ordinary visitors to Yarmouth:—

*Held*, that the alteration in the circumstances did not affect the plts.' right to the vill to vill ferry.

The deft. regularly carried passengers chiefly

**FERRY**—*continued*.

workmen, across the river. He did not always start from and arrive at the same spot, but as a rule he carried from and to practically the same part of a fish quay and the opposite bank within the limits of the plts.' exclusive ferry and did practically a ferry business:—

*Held*, that the deft. by his acts had interfered with the plts.' rights as owners of the vill to vill ferry.

*Semle* that even assuming the lower ferry to be only a point to point ferry, and that the upper ferry was entitled to no protection, the facts with regard to the change of circumstances did not shew that there was a different traffic within the principle of the decisions in *Newton v. Cubitt* (1862) 12 C. B. (N.S.) 32, and *Cooes District Council v. Southampton Steam Packet Co.* [1905] 2 K. B. 287, but shewed only an increase and development and alteration in the nature of the same traffic, and that as the places from and to which the deft. carried passengers were close to the plts.' lower ferry, the acts of the deft. constituted a disturbance of that ferry. *GENERAL ESTATES CO., LD. v. BEAVER* — *Pickford J.* [1913] 2 K. B. 433; 82 L. J. (K.B.) 585; 11 L. G. R. 441; 108 L. T. 839; [1913] W. N. 74; 77 J. P. 249; 29 T. L. R. 327

**FERTILIZERS AND FEEDING-STUFFS.**

*See ADULTERATION.*

**FIERY FACIAS** — Execution — Unpatented mining claim in Ontario — Seizure and sale.

*See CANADA—Ontario.*

**FINAL ORDER** — Time for appealing — Appeal from county court — Appeal from judgment of Divisional Court.

*See APPEAL—Court of Appeal.*

**FINANCE ACTS.**

*See REVENUE.*

**FINE** — Summary jurisdiction — Default of sufficient distress — Imprisonment — Licensing (Consolidation) Act, 1910.

*See JUSTICES—Criminal Law.*

**FIRE** — Ship — Damage to cargo — Unseaworthiness — Bill of lading — Exceptions.

*See SHIPPING—Fire.*

**FIRE INSURANCE.**

*See INSURANCE (FIRE).*

**FISH** — Fried fish shop — Injunction.

*See COVENANT AND NUISANCE.*

**FISHERMAN** — Workmen's compensation — Workman — Share of profits.

*See WORKMEN'S COMPENSATION—Workman.*

**FISHING** — Manor — Copyhold tenants — Alleged right of fishing — Immemorial usage — Custom — Reasonableness.

The tenants on certain ancient copyhold messuages within a manor had since 1599 asserted a custom for them to fish in certain waters within the manor, but there were continual protests by the lord of the manor. As far back as living memory went the tenants had habitually

**FISHING**—*continued*.

fished without interruption by the lord of the manor, and some of them had let the fishing and did not regard their right as limited to catching fish for their own consumption. In an action by the owner of two of the messuages, which had been turned into fee simple, against the lords of the manor and their fishing tenant, for a declaration that the plt. had a right of fishing for the consumption of the occupants of the messuages:—

*Held*, that on the evidence the plt. had failed to prove the existence of an immemorial usage amounting to a legal custom, and that as the alleged usage had been without reference to the needs of the occupants of the messuages, the plt. had failed to prove a reasonable usage, and therefore he was not entitled to the declaration asked for. *PAYNE v. THE ECCLESIASTICAL COMMRS. AND LONDON* — *Warrington J.* 30 T. L. R. 167

**FISHING NETS** — Collision clause of Lloyd's policy — Construction of clause — "Collision . . . with ship or vessel" — Collision with nets of fishing vessel.

*See INSURANCE—Marine.*

**FIXTURES** — Hire-purchase agreement — Equitable interest — Debentures — Receiver — Possession — Priorities — Right of vendor of fixtures to remove.

Appeal from a decision of Eve J. [1913] W. N. 128).

By an agreement in writing, dated Nov. 11, 1910, George Mills & Co., Ltd., agreed to supply and erect upon the works owned by the firm of Morrison, Jones & Co. (the predecessors of the deft. co.) a complete installation of a patent automatic sprinkler for the protection of the premises from fire, at the price of 2377., payable by annual instalments. In the event of default being made in any annual instalment, or of any breach of the agreement by the purchasers, the whole unpaid balance of principal and interest was immediately to become due. The agreement further provided that the basis of the contract was that the sprinkler installation remained the sole and exclusive property of the contractors until the whole sum of 2377. had been paid, and in the event of default the contractors might enter upon the premises and remove the installation.

The deft. co. took over the assets and liabilities of the firm of Morrison, Jones & Co., including their interest under the agreement. In Dec., 1911, the deft. co. issued a series of first mortgage debentures containing a charge in the usual form on the undertaking, such charge to be a floating security.

Default was made in payment of the instalment under the agreement of Nov. 11, 1910, and on Oct. 18, 1912, a receiver was appointed in an action brought by the debenture-holders to enforce their security. The debenture-holders had no notice of the agreement.

George Mills & Co., Ltd., took out this summons for liberty to enter upon the deft. co.'s premises and remove therefrom the sprinkler installation.

Eve J. gave judgment in favour of the applicants.

**FIXTURES—continued.**

The plts. in the action appealed.

The C. A. dismissed the appeal.

Judgment of Parker J. in *In re Samuel Allen & Sons, Ltd.* [1907] 1 Ch. 575, followed. *In re MORRISON, JONES & TAYLOR, LD. COOKES v. THE CO.* - C. A. [1913] W. N. 316; [1914] 1 Ch. 50; 30 T. L. R. 59; 58 S. J. 80

*Hiring by lessees—Re-entry by lessors—Detinue—Electric light filament lamps left on premises by lessees—Re-entry by lessors.*

The plts. let electric light filament lamps on hire to the lessees of a theatre. The lamps were affixed to their brackets by the bayonet attachment in common use for this purpose. The defts., who were the owners of the theatre, re-entered for non-payment of rent, the lamps being then still on the premises and no demand being then made for them by the plts. Shortly afterwards the plts. claimed them from the defts. and as the latter did not give them up, the plts. sued them in detinue :—

*Held*, that the plts. were not entitled to recover. **BRITISH ECONOMICAL LAMP CO., LD. v. EMPIRE MILE END, LD.**

Div. Ct. 29 T. L. R. 386

**FLATS**—London—Poor rate—Valuation—Houses and buildings let out in separate tenements—Rateable value—Deductions from gross value.

See **RATES**.

**FLOATING CHARGE.**

See **COMPANY—Debentures and MORTGAGE—Redemption.**

**FLOODING**—Burgh—Drainage and road authority—Natural stream—Reparation—Negligence—Edinburgh Corporation.

See **SCOTTISH LAW**.

**FLOWER BOXES**—Demise of first floor office—Right to fix flower boxes outside office windows—Trespass—Demise of both sides of outer wall.

See **LANDLORD AND TENANT—Lease**.

**FOG.**

See **NEGLIGENCE—Onus of Proof and SHIPPING—Collision—Fog.**

**FOOD AND DRUGS**—Sale of.

See **ADULTERATION**.

**FOOTPATH.**

See **HIGHWAY**.

**FORECLOSURE**—Mortgage.

See **MORTGAGE**.

**FOREIGN COUNTRY**—Charge of legacies and debts on specific realty and personality in—Will—Construction—Mixed fund—Non-exoneration of residuary personality.

See **WILL—Charge**.

—Payment under compulsion of law—Legal process in a foreign country—Action for recovery of money.

See **MONEY HAD AND RECEIVED**.

**FOREIGN DOMICIL**—of husband—Separate domicile of wife—Jurisdiction—Decree.

See **DIVORCE**.

**FOREIGN INVESTMENTS**—Income tax—Insurance company—Interest not remitted home.

See **REVENUE—Income Tax**.

**FOREIGN JUDGMENT**—Colonial judgment—Defendant born in Colony—"Subject" of Colony—Defendant not resident or domiciled there—Enforceability of judgment.

The fact that a person is born in a British Colony does not make him a "subject" of that Colony so as to make a judgment recovered against him in his absence in the Colonial Court enforceable in this country.

The deft. was born in the Colony of Victoria, Australia, and resided for twenty-six years there until 1890, when he came to live in England. Neither of his parents was born in Victoria. Since 1890 he visited Victoria on several occasions, the last being in 1906. In 1911 the plts. issued a writ against him in the Supreme Court of Victoria to recover a sum of money as being due on accounts stated. The writ was served on the deft. in England, but he did not appear, and the plts. signed judgment in the Victorian Court against him in default of appearance. In an action in England upon the judgment, the plts. contended that, as the deft. was born in Victoria, he was a "subject" of that Colony, and that therefore the judgment was enforceable here :—

*Held*, that the deft. was a subject of the King, and not a "subject" of Victoria so as to render the judgment recovered against him in his absence binding upon him in this country, and that therefore the judgment was not enforceable here. **GAVIN GIBSON & CO., LD. v. GIBSON**

**Atkin J.** [1913] 3 K. B. 379; 82 L. J. (K. B.) 1315; [1913] W. N. 247; 29 T. L. R. 665;

109 L. T. 445

*Court in British India—Decree for divorce and damages against co-respondent—Co-respondent domiciled and resident in England—Action by petitioner to recover upon the decree for damages.*

The Courts of this country will enforce a foreign judgment in personam ancillary or accessory to a decree for dissolution of marriage, such as a judgment for damages against a co-respondent, regularly pronounced according to the law of the Court which has given it, where both the Court pronouncing and the Court enforcing the judgment are Courts of the same Sovereign and where the Court enforcing it could not grant that relief, because it had no jurisdiction over the marriage to the dissolution of which the judgment for damages was ancillary.

The plt., who was a British subject domiciled and resident in British India and had been married there, regularly instituted a suit for divorce in India under the Indian Divorce Act, 1869, making the deft. a co-respondent. The deft., a domiciled British subject, had then left India and had no property there; he was resident in England and was duly served with the petition by registered post in England, in accordance with the procedure of the Indian Court; he did not appear or defend the suit. A decree was pronounced dissolving the marriage and awarding 7200% as damages to be paid by the deft. to the plt. :—

**FOREIGN JUDGMENT—continued.**

*Held*, that the plt. was entitled to recover the damages awarded by the judgment of the Court in India. **PHILLIPS v. BATHO Scrutton J.** [1913] 3 K. B. 25; 82 L. J. (K. B.) 882; 109 L. T. 315; [1913] W. N. 192; 29 T. L. R. 600

*Proceedings contrary to natural justice—Contract—Assignment—Defence of fraud—Exclusion of evidence of fraud by Canadian Court.*

In an action upon a foreign judgment the English Court will not hold the foreign judgment to be contrary to natural justice, where the foreign Court has jurisdiction over the subject-matter of the suit and the parties thereto, and where the parties have duly and in accordance with English ideas of natural justice been summoned to the foreign Court so as to have had a hearing or an opportunity of being heard.

A certain co. in Quebec owed a sum of money to one N. He assigned part of this debt to the plt. as security for a loan. He subsequently assigned the whole debt to the deft., subject to the rights of the plt., in consideration of an undertaking by the deft. to pay to the plt. the amount of the debt due from N. to the plt.

The plt. sued the deft. in Canada to recover the amount of the debt. The deft. in that action pleaded that he had been induced to enter into the undertaking by the fraudulent misrepresentation of N. as to the financial position of the co. The Canadian Court held that evidence of this fraud was inadmissible, and gave judgment for the plt.

In an action in England upon this judgment:—

*Held*, that the judgment was not contrary to natural justice. **ROBINSON v. FENNER**  
**Channell J. [1913] 3 K. B. 835**

**FOREIGN MARRIAGE**—Evidence—Former petition and decree of restitution of conjugal rights—Formal proof of marriage in that suit—Subsequent petition for dissolution—No fresh proof of marriage required.  
*See* **DIVORCE.**

**FOREIGN POSSESSIONS**—Income tax—Place of assessment—Jurisdiction to assess at place of residence.  
*See* **REVENUE.**

—Income tax—Property settled on infants—Infants not entitled to a vested interest.  
*See* **REVENUE—Income Tax.**

**FOREIGNER**—Domiciled abroad—Insured in English company—Right of foreign executors.  
*See* **INSURANCE—Life.**

**FORFEITURE**—Determinable life interest—Receiving order—Discharge of order.  
*See* **WILL.**

—Protected life estate—Advancement clause—Whether advances to appointees valid—Whether life estate forfeited.  
*See* **SETTLEMENT—Appointment.**

*Relief against—Default in payment of an instalment of purchase-money—Time of the*

**FORFEITURE—continued.**

*essence of the contract—Specific performance decreed—British Columbia.*

An agreement for sale by the respondent co. of lands in British Columbia for a price to be paid in instalments at specified dates contained a clause of forfeiture both of the agreement and of all payments of past instalments of purchase-money in case of default of punctual payment of any one instalment; and time was declared to be of the essence of the agreement. Default having been made, the co. sued to enforce the forfeiture; the appellant paid into Court the instalment due and counterclaimed for specific performance:—

*Held*, that by the law of British Columbia as well as by English law the condition of forfeiture was in the nature of a penalty from which the appellant was entitled to be relieved on payment of the purchase-money due. **KILMER v. BRITISH COLUMBIA ORCHARD LANDS, LD.** - P. C. [1913] A. C. 319; 82 L. J. (P. C.) 77; 108 L. T. 306; 29 T. L. R. 319; 57 S. J. 338

**FRANCHISE.**

*See* **PARLIAMENT.**

**FRAUD.**

*See* **COMPANY—WINDING-UP—Transfer of Action.**

*See* **CRIMINAL LAW—Fraud.**

*Contract induced by Fraudulent Misrepresentation.*

Interlocutor of the Second Division of the Ct. of Sess. in Scotland (1911 S. C. 33) reversed on the facts. **GLASGOW AND SOUTH WESTERN RY. Co. v. BOYD & FORREST** - H. L. (Sc.) [1913] A. C. 404

—Foreign judgment.

*See* **FOREIGN JUDGMENT.**

—Knowledge of unregistered rights.

*See* **MALAY STATES.**

**FRAUDS, STATUTE OF**—Guarantee.

*See* **GUARANTEE.**

*Memorandum in writing—Contract—Promise to leave a legacy by will—Consideration for marriage—Expression of intention—Importing a promise—Statute of Frauds.*

The father of an intended bride, when asked by the husband to make a settlement, wrote: "I have made a will leaving V. (the bride) a legacy of 5,000*l.*, and I do not intend to alter it. I shall leave the allowance of 150*l.* as it is." The will was afterwards revoked:—

*Held*, that the letter followed by the marriage constituted an enforceable contract as to the 5,000*l.*, but not as to the 150*l.*, and that B. was entitled to prove against the estate of the father for the 5,000*l.* by way of damages. *In re* **BROADWOOD. EDWARDS v. BROADWOOD** - C. A. 56 S. J. 703

*Memorandum in writing—Construction of memorandum—"I agree to give 150*l.* a year, and I hope a bit more"—Annuity—Period of—Intention to grant an allowance—Termination at death of grantor*



**FRAUDS, STATUTE OF**—*continued.*

• Where a father, on the day before his daughter's marriage, wrote to her intended husband and said "My dear Bert, when you marry my daughter Lydia I agree to give 150*l.* a year, and I hope a bit more," and the marriage took place and the 150*l.* per annum was paid :—

*Held*, that such a document was sufficient to satisfy the Statute of Frauds, but was only a contract on the part of the father to pay to the daughter an allowance of 150*l.* a year during the joint lives of the father and the daughter.

*Ex parte Annandale, In re Curtis* (1834) 4 Dea. & C. 511, followed.

*Llanelly Ry. and Dock Co. v. London and North-Western Ry. Co.*, L. R. 7 H. L. 550, distinguished. *In re LINDREA. LINDREA v. FLETCHER* - Sargant J. 109 L. T. 623 ; 58 S. J. 47

*Sale of land*—Contract—Memorandum—Written offer to purchase—Time for acceptance limited—Acceptance out of time—Subsequent conduct—Implied parol agreement either to extend time or to treat acceptance as valid—Specific performance—Vendor's action—Term left open in offer and acceptance—Term solely in vendor's favour—Waiver by vendor at the bar—Statute of Frauds (29 Car. 2, c. 3), s. 4.

Although a written offer to purchase land limits a definite time for acceptance, with a proviso withdrawing the offer if not accepted within that time, that time limit may nevertheless be extended by a parol agreement before it expires, or, if not so extended, the actual acceptance though out of time may by a parol agreement be treated as a valid acceptance, and in neither case is any memorandum of the parol agreement required by the Statute of Frauds.

*Goss v. Lord Nugent* (1833) 5 B. & Ad. 58, distinguished.

A parol agreement of either nature may be implied by the conduct of the parties subsequent to the actual acceptance.

*Bruner v. Moore* [1904] 1 Ch. 305, 312, applied.

A purchasers' offer provided that the purchase-money should be paid as to 250*l.* on completion and as to the balance within two years bearing interest at 3 per cent. and to be secured to the vendor's satisfaction.

The vendor accepted the offer subject to the purchase-money being secured to his satisfaction.

Two months before the date fixed for completion, and while the method of securing the balance of the purchase-money was still in negotiation, the purchasers withdrew their offer.

The vendor sued for specific performance or damages :—

*Held*, that the provision for securing the balance of the purchase-money to the vendor's satisfaction did not prevent the offer and acceptance from constituting a binding contract, and that in any case, as the provision was solely for the vendor's benefit, he could waive it at the Bar.

*Hawksley v. Ontram* [1892] 3 Ch. 359, applied. *MORRELL v. STUDD & MILLINGTON*

*Astbury J.* [1913] 2 Ch. 648 ; 109 L. T. 628 ; [1913] W. N. 273 ; 58 S. J. 12

**FRAUDS, STATUTE OF**—*continued.*

—Trustee—Breach of trust—Appropriation of security by defaulting trustee to meet breach of trust—Declaration of trust.  
*See* TRUSTEE.

**FRAUDULENT MISREPRESENTATION.**

*See* COMPANY—Prospectus, and INFANT—Contract.

**FRAUDULENT PREFERENCE**—Return of goods to creditor—Motive of debtor—Evidence—Collateral facts—Admissibility—Pressure.

*See* BANKRUPTCY—Fraudulent Preference.

**FRAUDULENT TRUSTEE**—Treasurer of friendly society—Misappropriation of funds—Prosecution—Necessity of sanction of Attorney-General.

*See* CRIMINAL LAW—Larceny Act, 1901.

**FREEMASONS.**

*See* REVENUE—Corporation Duty.

**FREIGHT.**

*See* SHIPPING.

**FRIENDLY SOCIETY**—Fraudulent trustee—Prosecution—Necessity of sanction of Attorney-General.

*See* CRIMINAL LAW—Larceny Act, 1901.

—Winding-up—Unregistered company—Friendly society not registered under the Friendly Societies Acts—Jurisdiction.

*See* COMPANY—WINDING-UP.

**FRIENDS, SOCIETY OF**—Non-parochial registers—Certificates of recording clerk—Admissibility.

*See* EVIDENCE—Public Document.

**FUND IN COURT**—Dormant funds—Application for transfer by judicial factor—No certificate of beneficial interests—Judicial Factors (Scotland) Act, 1889 (52 & 53 Vict. c. 39), s. 13.

A person who has been appointed judicial factor by the Scottish Court in respect of a dormant fund in Court in England is not entitled as such to call for a transfer in the absence of the persons beneficially interested. *GORDON v. SMITH - Neville J.* 108 L. T. 951 ; [1913] W. N. 161 ; 57 S. J. 595

**FURNITURE**—School—Power and duty of local education authority to provide furniture.  
*See* SCHOOL.

**GAME.**

*See* GROUND GAME ACT.

**GAMING**—Betting—Deposit of money on bets—Betting outside house—Stakes handed over outside—Payment of bets inside house—Receiving moneys on "deposit"—Meaning of "deposit"—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3, 4.

The respondent was the tenant of a house on the ground floor of which was a shop with a room at the back. Outside the house there was an entry from which a side door opened into the

**GAMING—continued.**

house. The respondent's father occupied the house. Betting was carried on by the respondent in this way: A person wishing to bet wrote on a paper the name of the horse and the amount of the bet; he wrapped up in the paper the coin representing the bet and handed the same to the respondent in the entry or street. Several packets were so received by the respondent, but none were received in the house. Papers and coins which had been so handed to the respondent outside were found in the back room of the house, and the rooms of the house were used merely for paying out the money won on bets previously made outside.

Upon an information under s. 4 of the Betting Act, 1853, against the respondent as the occupier of the house for receiving moneys as a "deposit" upon bets, the justices dismissed the information on the ground that, the betting having been completed outside the house, the mere taking of the papers and money to the back room without the knowledge of the persons making the bets was not a "receiving" of the moneys within the meaning of the statute:—

*Held*, that the justices were wrong in holding that the mere taking of the papers and money to the back room without the knowledge or connivance of the persons making the bets did not constitute a "receiving" within the meaning of the statute, but that sufficient facts had not been found to bring the case within s. 4, and upon that ground the case ought not to be remitted to them.

*Held*, further (Avory J. dissenting), that "deposit" in s. 4 includes the payment or handing over of the whole sum staked as well as of a part only of that sum. **BOULTON v. HUNT**

**Div. Ct. 109 L. T. 245; 77 J. P. 337**

*Bets—Payment—Crossed cheque—Payment into bank—Action by drawer against payee—Meaning of "holder"—Gaming Act, 1853 (5 & 6 Will. 4, c. 41), s. 2.*

By s. 2 of the Gaming Act, 1853, money paid to the "indorsee, holder, or assignee" of a security given for a consideration arising out of illegal transactions is to be deemed to be paid on account of the person to whom the security was originally given and such money is recoverable from such last-named person by action.

The plt. gave to the deft. in payment of bets certain crossed cheques drawn by the plt. in favour of the deft. or the deft.'s order. The deft. indorsed the cheques and paid them into his bank and they were paid by the plt. There was no evidence that the payment had been made to the bank in the character of holders in their own right and not in that of agents for the deft.:—

*Held*, in an action by the drawer against the payee to recover the amount of the cheques, that in the above section the word "holder" means not the person to whom the security was originally given, but a holder deriving his title from that person, and that as the bank merely collected the money for the deft. the bank was not the indorsee, holder, or assignee within the section, and therefore the plt. could not recover.

*Quære*, whether, if it had been proved that the deft.'s account at the bank was overdrawn,

**GAMING—continued.**

the plt. might have recovered, because the bank might then have been the holders of the cheque within the section. **NICHOLLS v. EVANS**

**Channell J. 30 T. L. R. 42**

1. *Betting—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3—Documents relating to racing or betting—Postal orders.*

A search-warrant authorized a police officer to seize "all lists, cards, or other documents relating to racing or betting":—

*Held*, on appeal, that postal orders found upon the premises, along with lists and coupons relating to betting, had been competently seized, and were admissible as evidence.

2. *Evidence—Competency—Statement by accused in conversation with officer executing search-warrant.*

In a betting prosecution a police officer's evidence was that while he was executing a search-warrant the accused made certain statements to him in reply to a remark regarding the charge. The evidence was objected to, but the objection was repelled, and a conviction followed:—

*Held*, on appeal, that as the statements had been voluntarily made, the evidence was not incompetent.

3. *Betting—Betting Act, 1853 (16 & 17 Vict. c. 119), ss. 1, 3—Houses used for betting—One office used for making bets—Accounts settled at second office.*

Bookmakers were charged with a contravention of the Betting Act, 1853, ss. 1 and 3, by using two offices "for the purpose of money or other valuable thing being received" in connection with betting. It appeared that the accused carried on a betting business by post, and conducted the whole correspondence regarding their bets from one office, while they settled their accounts at the second office. They were found "guilty as libelled."

It was argued, on appeal, that no offence had been committed in the second office:—

*Held*, that an offence had been committed, as that office was used for the purpose of receiving money connected with bets, whatever the place of actual receipt might be. Appeal dismissed.

**Stoddart v. Hawke** [1902] 1 K. B. 353, followed. **HODGSON, SENIOR AND ANOTHER v. MACPHERSON** - - - - - **7 Adam, 118**

*Game of chance—"Progressive whist"—Legality of—User of place for purpose of unlawful gaming—Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), s. 4.*

By s. 4 of the Gaming Houses Act, 1854, any person who having the use of any house, room, or place uses the same for the purposes of unlawful gaming being carried on therein may be summarily convicted.

The appellant having the use of certain premises used the same for carrying on therein games of cards known as "progressive whist" or "whist drives" advertised to be held each week during the winter. The public were invited to attend on payment of 6d. each, and admission tickets were given to any one who paid for them. The players on entering were shewn to

**GAMING**—*continued.*

tables and played the ordinary game of whist; there was no choice of partners, and at the end of each hand the winning couple proceeded one to the next table higher up the room, the other to the table down the room, and after a number of hands had been thus played, the scores were handed up and prizes given to the ten players who had the highest scores.

The prizes were provided by the appellant out of the proceeds of the ticket money, the balance being retained by the appellant as his personal profit. The appellant having been convicted under s. 4 :—

*Held*, that in the game of progressive whist as so played the element of chance so much predominated over the element of skill as to make the game practically a game of chance; that the gaming was unlawful gaming within s. 4, and that the appellant was properly convicted of using the place for the purpose of unlawful gaming. **MORRIS v. GODFREY** — Div. Ct.

23 Cox, C. C. 40; 106 L. T. 890; 76 J. P. 297; 28 T. L. R. 401

*Penny-in-the-slot machine—Cup and ball—Hiring out of machine—Game of skill.*

By an agreement made between the plts. and the deft. the plts. agreed to supply and the deft. agreed to take on hire certain automatic machines. The machines were worked as follows: The operator having placed a penny in the slot pressed a spring which released a ball. The ball thereupon gyrated among a number of pins. The object of the operator was to catch the ball when it dropped by means of a cup attached to a movable bar. It entirely depended upon the skill of the operator in placing the cup in the right position for catching the ball.

In an action claiming three weeks' rent of the machines :—

*Held*, that there was a dominant element of skill in the use of the cup, that it was therefore a game of skill, and that the plts. were entitled to succeed.

Judgment of Scrutton J. affirmed. **PESSERS, MOODY, WRAITH AND GURR, LD. v. CATT**

77 J. P. 429; 29 T. L. R. 381

*Lottery—Purchase of chance—Gift of prize—Money paid by purchaser of chance not used for purchase of prize—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2—Lotteries Act, 1823 (4 Geo. 4, c. 60), s. 41.*

**BARTLETT v. PARKER** — Div. Ct.

[1912] 2 K. B. 497; 81 L. J. (K. B.) 857;

23 Cox, C. C. 16; 106 L. T. 869;

76 J. P. 280

**GARNISHEE**—Judgment creditor—Garnishee order absolute—Bankruptcy notice—"Execution stayed"—Secured creditor. See **BANKRUPTCY—Notice.**

**GAS**—Highway—Dedication—Gas pipes—Power to gas company to break up street—Subsoil—Ownership.

See **HIGHWAY—Dedication.**

"Main" or "service pipe"—Company—Local authority—*Chesterfield Waterworks and Gaslight Company's Extension Act, 1865* (28

**GAS**—*continued.*

*Vict. c. xxvii.*—*Chesterfield Gas and Water Board Act, 1895* (58 & 59 Vict. c. cxlvii.), s. 4—*Chesterfield Gas and Water Board Act, 1911* (1 & 2 Geo. 5, c. xlv.), s. 28.

The plts. were a limited co. and manufactured and supplied gas in the parishes of W. and B., in Derbyshire. The Chesterfield Waterworks and Gaslight Co. had been incorporated in 1855 for the purpose of supplying gas in Chesterfield and Newbold and other places. By the Chesterfield Waterworks and Gaslight Extension Act, 1865, it was enacted that the Act of 1855 and the powers and provisions thereof should extend to and include the parishes of B. and W., provided that it should not be lawful for the Chesterfield Co. "to extend their mains" for the supply of gas in the parishes of B. and W., unless with the previous consent in writing of the plts. By the Chesterfield Gas and Water Board Act, 1895 (58 & 59 Vict. c. cxlvii.), the defts. were incorporated, and the undertaking of the Chesterfield Co. and all their rights, powers, duties and obligations were vested in the defts. By s. 4 of this Act the limits for the supply of gas and water were to be the existing limits of the co. provided that it should not be lawful for the board "to extend the existing mains of the Company" for the supply of gas in the parishes of B. and W., unless with the previous consent in writing of the plts.

In Nov., 1912, the defts., on the application of G., the owner of a foundry in the parish of W., laid a two-inch pipe, 88 yards in length, from their fifteen-inch main in Sheffield Road, in the parish of Newbold, down and along Foundry Street, in the parish of W., in order to supply G.'s foundry with gas. The plts.' consent was not obtained.

The question raised was whether this two-inch pipe was an extended "main" within the meaning of the proviso in s. 4 of the Act of 1895, or was a mere service pipe, for the laying of which the consent of the plts. was not required.

The pipe was intended for the use of G. only, but was alleged by the plt. to be of a capacity more than sufficient to meet the present requirements of G.

Eve, J. said that two questions were raised in this case, one of law, the other of fact. The question of law involved the true construction of the restrictive proviso imposed on the exercise by the defts. of a statutory power to supply gas in the parishes of B. and W., and contained in s. 4 of the Chesterfield Gas and Water Board Act, 1895. Having regard to the fact that the defts. and their predecessors in title had for many years past supplied gas to consumers within both parishes by means of service pipes connected with mains situate within the parish of W., and were at present supplying forty-three consumers, it was difficult to understand why the plts. had not intervened before, if the construction of the proviso was that for which they contended, namely, that the word "mains" was equivalent to the word "pipes." The distinction between these two items of property had been pointed out in the case of *Milnes v. Mayor of Huddersfield* (1886) 11 App. Cas. 511, 522.

It was impossible to read the word "mains"

**GAS—continued.**

in this proviso as covering both these items of property. The word "extend" in the proviso was appropriate to mains, not to service pipes. The distinction between the two had also been recognized in the general Act of 1871, and in the special Act of the def't.'s predecessors passed in 1876. The proviso was limited in its operation to "mains" properly so called, and not from service pipes. On the question of fact as to whether a two-inch pipe was a main or a service pipe, he was satisfied on the evidence that it was being used, and was intended to be used, as and for a service pipe only, and had not the attributes of a main. With regard to the pl'ts' contention that the capacity of the pipe was largely in excess of the present requirements of G., the consumer, the evidence shewed that it was laid down to supply the estimated maximum requirements of this particular consumer. The action would be dismissed with costs. **WHITTINGTON GAS LIGHT AND COKE CO., LD. v. CHESTERFIELD GAS AND WATER BOARD** - **Eve J. [1913] W. N. 372 ; 53 S. J. 155**

**GENERAL LIEN.**

See **LIEN.**

**GENERAL WORDS**—Easement—Conveyancing and Law of Property Act, 1881.  
See **WATER—Artificial Watercourse.**

**GIFT—Chattels—Void deed—Acknowledgment—Voluntary gift—Knowledge of donor—Delivery of deed by donor—Redelivery—Passing of property.**

On Feb. 26, 1896, a deed of gift was executed by Mrs. S., by her attorney, S. L., by which in consideration of natural love and affection she gave to her daughter, Miss S., all the pictures, chattels, and effects in her house, 5, Chesterfield Gardens, which were set out in a list made by her late husband. In 1898 her solicitor, amongst other business matters, read over the deed of gift to her and made the following note of the interview so far as it related to the deed: "Attending you as to the deed of gift to Miss S. and you desired us to retain same on her behalf. You would have a copy made of the original inventory and would send us the original to keep with the deed. Also as to the P. A. given to" S. L. "and reminding you this had been prepared by Mr. M. and had never been in our possession." Shortly afterwards she sent the inventory to her solicitor with a note on it in her handwriting as follows: "Mr. S.'s catalogue with annotations of pictures and works of art at 5, Chesterfield Gardens, now the property of Miss S." Mrs. S. subsequently changed her house and part with some of the articles. She and her daughter lived together till in 1901 the daughter in consequence of her mental condition had to be placed under medical care. In an affidavit as to her daughter's property made in lunacy proceedings in 1902, Mrs. S. did not mention the articles the subject of the deed of gift. By her will made in 1910 Mrs. S. gave her pictures, furniture, and effects upon trust for her daughter for life and then for other persons. Mrs. S. died in April, 1911. It turned

**GIFT—continued.**

out that the power of attorney was not sufficiently wide to authorize S. L. to execute the deed of gift; and the trustees took out a summons to determine whether the chattels passed under the will or whether Mrs. S. had delivered or redelivered the deed so as to make it a valid operative instrument:—

*Held*, by Joyce J. and by the C. A., that in 1898 there was such an acknowledgment by Mrs. S. of the deed of gift that it became a deed binding on her; that what passed must be treated as a delivery or redelivery of the deed; that her knowledge that she was doing something to validate the transaction was immaterial; and that the pictures and furniture passed to the daughter. *In re SEYMOUR. FIELDING v. SEYMOUR* - **C. A. [1913] 1 Ch. 475 ; 82 L. J. (Ch.) 233 ; 108 L. T. 392 ; [1913] W. N. 54 ; 57 S. J. 321**

**GLASS**—Plate glass—Insurance.

See **INSURANCE—Plate glass.**

**GOLF CLUB**—Income tax—Fees received from visitors—Profit or gain—Method of assessment.

See **REVENUE—Income Tax—Profits.**

**GOODS**—General lien—Goods in cold store—Pledge of bills of lading—Exercise of lien against holder of bills of lading.  
See **LIEN.**

— Railway—Carriage of goods.

See **RAILWAY.**

— Sale of.

See **SALE OF GOODS.**

**GRANT**—Market—Charter days—By days—Streets subject to market rights—Presumption of lost grant—Easement—Dedication subject to obstruction.  
See **MARKET.**

— Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Conveyance—Construction—Express or implied grant—Agricultural ditch—Injunction.  
See **LOCAL GOVERNMENT—Drainage.**

**GRANT OF ADMINISTRATION.**

See **PROBATE.**

**GREAT EASTERN RAILWAY (STEAMBOATS) ACT, 1863.**

See **RAILWAY—Carriage of Goods.**

**GROUND GAME**—Owner occupying his own land—Right granted by occupying owner to kill ground game—Setting traps not in rabbit holes—Person having a right of killing ground game under the Act "or otherwise"—*Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 6.*

By s. 6. of the Ground Game Act, 1880, no person having a right of killing ground game under the Act "or otherwise" shall, for the purpose of killing ground game, employ spring traps except in rabbit holes:—

*Held*, that the provisions of this section apply only to occupying tenants and those authorized under the Act by such tenants to kill and take

**GROUND GAME**—*continued.* •

ground game, and do not apply to an occupying owner or the person authorized by him to kill ground game on the land, and consequently, where an owner occupying his own land sells to another person the right to kill and take the rabbits on the land, such other person is not subject to the restrictions imposed by the section as to employing spring traps except in rabbit holes.

LEWORTHY v. REES - Div. Ct. 109 L. T. 244; 77 J. P. 268; 29 T. L. R. 408

**GUARANTEE**—Bank guarantee—Duty of bank to guarantor—Non-disclosure by bank to guarantor of suspicions concerning conduct of debtor—Whether guarantor discharged.

See PRINCIPAL AND SURETY.

— Company limited by guarantee and not having its capital divided into shares — Winding-up—Contributions.  
See COMPANY—WINDING-UP.

*Indemnity*—Oral “promise to answer for the debt of another”—Guarantee of debt of a company—Debenture of company held by guarantor—Statute of Frauds (29 Car. 2, c. 3), s. 4.

The mere fact that a person, who guarantees payment of a debt due from the co., is induced to do so by reason of his having a floating charge on the assets and business of the co. will not take the case out of the 4th section of the Statute of Frauds.

The debt, in an action counterclaimed upon a promise by the plt. to be answerable for the price of goods supplied by the debt. to a limited co. The plt. was the holder of a large number of shares in and had lent money to the co., as security for which money he held a debenture of the co., which was a “floating” security on their business and assets. The debt. had been in the habit of supplying goods to the co. for the purposes of their business. A balance being due to him in respect of goods so supplied, he was threatening, unless this was paid, not to supply any more goods to the co. Thereupon the plt. made an oral agreement with the debt., the effect of which the jury found to be that he agreed to be answerable for the price of goods supplied to the co. by the debt., if the co. made default. The jury further found that the plt. was induced to enter into the agreement by the fact, *inter alia*, that he had a debenture charge upon the assets of the co. :—

*Held* (reversing the judgment of Lord Coleridge J.), upon the above facts, that the agreement was a guarantee which came within s. 4 of the Statute of Frauds, and, therefore, the agreement not being in writing, and there being no memorandum of it in writing, signed by the party to be charged, the counter-claim failed.

Dicta in *Harburg India Rubber Comb Co. v. Martin* [1902] 1 K. B. 778, discussed. *DAVYS v. BUSWELL* - C. A. [1913] 2 K. B. 47; 82 L. J. (K. B.) 499; 108 L. T. 244

See PRINCIPAL AND SURETY.

**GUARANTOR.**

See GUARANTEE.

**HABITUAL CRIMINAL.**

See CRIMINAL LAW — Habitual Criminal.

**HARBOURS**—Docks.

See DOCKS.

**HARBOURS, DOCKS, AND PIERS CLAUSES ACT, 1847.**

See DOCKS.

**HEALTH INSURANCE.**

See INSURANCE (NATIONAL).

“**HEIR-AT-LAW**”—Marriage settlement—Land—Limitation to settlor for life with ultimate limitation to his heir-at-law—Construction.

See SETTLEMENT.

**HIGHWAY.**

Bridge, col. 240.

Dedication, col. 240.

Extraordinary Traffic. See below Repairs.

Footpath, col. 245.

Land Tax. See LAND TAX.

Locomotives. See BRIDGE.

Obstruction, col. 246.

Repairs, col. 246.

**Bridge.**

— Canal made across highway—Highway carried by bridge over canal—Standard of repair.

See BRIDGE.

**Dedication.**

*Building estate—Deposited plan—Proposed road and footpath—User by public—Extent of dedication—Adjoining owner—Right of access to highway.*

Appeal from a decision of the C. A. affirming a decision of Joyce J. [1912] 2 Ch. 633.

The appellant laid out certain property at Tottenham as a building estate in accordance with a plan approved by the respondents. The plan shewed a proposed road bounded on the north by the boundary fence of a park belonging to the respondents, and having on either side of the roadway dotted lines indicating intended footpaths forming part of the road. The appellant built houses on the southern side of the road overlooking the respondents' boundary fence and made up and metalled the road for one-half of the width next to the houses. The further or northern half of the road next to the respondents' fence was not made up. The evidence shewed that for some three years before action brought the road had been uninterruptedly used as a thoroughfare by pedestrians, cyclists, and vehicles, the metalled part being used in preference to the unmetalled part. The respondents, who were building on their adjoining land, had recently opened a gate in their boundary fence and were carting building materials across the unmetalled portion of

**HIGHWAY (Dedication)**—*continued.*

the road and the part intended to be appropriated for a footpath. The appellant having blocked up the opening made in the respondents' fence, the respondents brought an action for an injunction to restrain the appellant from impeding them from entering on their land from the road. Joyce J. held that the uninterrupted user of the road by the public justified the inference of an intention on the part of the appellant to dedicate the road throughout its whole width to the public as a highway, and that the respondents, as adjoining owners, were entitled to a reasonable extent to cross on foot or with vehicles the portion of the highway appropriated for a footpath.

The H. L. dismissed the appeal.

Lord Dunedin said that this case depended upon a question of fact, as to which four judges had come to the same conclusion, and he had no clear opinion that that conclusion was wrong. *ROWLEY v. TOTENHAM U. D. C.*

**H. L. (E.) [1913] W. N. 367; 30 T. L. R. 168**

*Cul-de-sac*—*Urban authority*—*Building owner*—*Deposited plans passed*—*Length of new street defined on plans*—*New street constructed*—*Houses built*—*By-laws*—*Paignton Improvement Act, 1898 (61 & 62 Vict. c. cclvii.), ss. 46, 48, 50*—*Building owner's right to enclose dead end of cul-de-sac*—*Alleged highway*—*Dedication*—*Evidence*—*Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 157*—*Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 17.*

In 1907 the plans of a building estate deposited by the owner were passed by the local authority. The plans shewed an intended new street with a southern outlet into a highway and extending northwards therefrom some distance without an outlet, so that it was a cul-de-sac. The plans also shewed the land on the east side of the new street plotted out for the erection of houses. The new street was constructed, kerbed and channelled on its eastern side with a footpath, at the cost of the owner and to the satisfaction of the local authority, who, as the water authority, laid a water main in the new street. A gas main was also laid therein. By 1910 the owner had disposed of all the plots except the two northernmost plots, and had granted to his purchasers or lessees a right of way over the new street, and houses were built. In Sept., 1910, K. bought the two remaining plots and the north end of the new street so far as it was continuous with the two plots, with a right of way over the new street up to the two plots, and erected a fence with an opening for gates across the new street in a line with the southern boundary of the two plots, thus enclosing the north end of the new street he had bought. The local authority had not taken over the street or expended any public money upon it, but alleged that the new street throughout its entire length had been dedicated to the public and had become by user a highway, and threatened to pull down and remove the fence. In an action by K. to restrain the local authority from interfering with or pulling down his fence :—

**HIGHWAY (Dedication)**—*continued.*

*Held*, on the evidence, that the new street had not by dedication or user become a highway, but was a private road.

*Held*, also, that the by-laws and special Act of the local authority dealt only with the width and level, and not with the length, of new streets, and therefore that, in the absence of an order under s. 17 of the Public Health Acts Amendment Act, 1907, the owner was entitled to deviate from the plans and to enclose the north or dead end of his private road.

An injunction was granted accordingly.

**KIRBY v. PAIGNTON U. D. C.**

**Neville J. [1913] 1 Ch. 337; 82 L. J. (Ch.) 198; 11 L. G. R. 305; 108 L. T. 205; [1913] W. N. 43; 77 J. P. 169; 57 S. J. 266**

*Footway*—*Streets*—*Private street works*—*"Part of a street"*—*Strip of ground marked by line of pillars*—*Sufficiency of evidence*—*Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 7 (a).*

On an objection taken by the appellants in pursuance of s. 7 of the Private Street Works Act, 1892, that a certain strip of ground did not form part of the street with which the urban district council were dealing under the Act, the evidence shewed that :—

The strip in question had been shewn upon a plan deposited in 1909 by the appellants' predecessors in title, and approved by the respondent council, in pursuance of the by-laws as to new streets and buildings which were in force in the district. On this plan the strip was coloured green, and bounded on the side adjoining the then existing street by a dotted line, and on the other side by a proposed corner shop which was to be set back in line with existing buildings further along the street. The shop had been built practically in accordance with the plan; and a wall, which had stood where the dotted line was marked, had been taken down, and five large stone pillars had been erected at intervals along its site. The strip between the line of pillars and the shop was partly asphalted in a similar manner to the footpath of the main road round the corner of the shop, and foot traffic passed over it without interruption. The council had previously purchased similar strips of ground from the appellants' predecessors in title for the purpose of widening the main road. After the council had taken steps under the Private Street Works Act, 1892, with respect to the street, the appellants placed wooden rails between the stone pillars and across the strip. The justices found that the strip of ground in question was part of the street, and it was

*Held*, that there was sufficient evidence before the justices to support their finding. **BELL & SONS v. GREAT CROSBY U. D. C. — Div. Ct. 10 L. G. R. 1007; 108 L. T. 455; 77 J. P. 37**

*Footway*—*Tolls for horse and wheeled traffic*—*Free passage for foot passengers*—*Road marked "Private road"*—*Liability of frontagers to repair*—*Dedication*—*Lord Radnor's Estate Act, 1825 (6 Geo. 4, c. xxvii.), s. 5*—*Private street works*—*Highway repairable by inhabitants at large*—

**HIGHWAY (Dedication)—continued.**

*Evidence of dedication of private carriage road as a highway for foot passengers before 1835—Power of limited owner to dedicate under Private Estate Act—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 5, 7.*

**BROCKMAN AND OTHERS v. FOLKESTONE CORPORATION** - - **C. A. 10 L. G. R. 856 ; 107 L. T. 483 ; 76 J. P. 443**

*Footway in street—Evidence of dedication to public—Obstruction—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28.*

In 1852 a plot of land in a street, a public highway repairable by the local authority, was demised by a lease for 999 years. Three cottages were erected on it, with a footway in front abutting on the street and paved with cobbles. Between twenty and forty years ago half the width of the cobble stones was taken up and flags were substituted, but by whom there was no evidence to shew. The other half in front of the cottages remained as it was. In 1890 the cottages were converted into shops. Up to about fifteen years ago the cobbled part was repaired by the leaseholder, and then flags were substituted for the remaining cobbles by the local authority, who had since repaired the whole footway. From 1890 the occupier of one of the shops had a show-case standing on the footway in front of his shop, but the public continued to use the whole footway, except so far as they were obstructed by the show-case.

The shopkeeper was prosecuted for obstructing the passage of the public over the footway, and the justices found that the user of the footway by the public since 1852 until the cottages were turned into shops—a period of forty years—was a dedication of the land the subject of the lease to the public, and that such user had been so notorious as to lead to the presumption that the lessor had acquiesced in the dedication, and that the obstruction since 1890 was not sufficient to rebut the presumption of dedication. The shopkeeper was accordingly convicted, and on appeal by special case it was

*Held*, that the conviction must be affirmed. The question was one of fact for the justices, who were entitled upon the statements in the case to find that the early user of the footway by the public was evidence upon which they could presume dedication, and that the user subsequent to 1890, when the show-case was first erected, did not rebut the evidence of dedication at an earlier date. **OPENSHAW v. PICKERING**

**Div. Ct. 11 L. G. R. 142 ; 77 J. P. 27**

*Land belonging to a garden suburb company—Public meeting—Right of company to restrain public meeting on their property—Hampstead Garden Suburb Act, 1906 (6 Educ. 7, c. cccii.).*

The plt. co. was formed to acquire and did in fact acquire land at Hampstead to be laid out as a garden city under and by virtue of powers conferred by a private Act of Parliament. The roads in the garden city were vested in the plts. and were to remain so vested until made up and taken over by the highway authority. The deft. gave notice that he intended to hold an open-air meeting in the neighbourhood

**HIGHWAY (Dedication)—continued.**

of a church on the plts.' property at the junction of two roads. These roads were not barred, but notices had been posted upon them announcing that they were private roads. They were not dedicated to the public, nor had they been taken over by the highway authority. The plts. having sought an injunction :—

*Held*, that, it being clear that there was no public right of way along the roads in question, it was unnecessary to discuss the question about any right of holding a meeting at the junction of the roads, and that the plts. were entitled to an injunction. **HAMPSTEAD GARDEN SUBURB TRUST, LD. v. DENBOW** - **Phillimore, J. 77 J. P. 318**

*Repair—Way becoming a highway after 1835.—Whether repairable by inhabitants at large—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 23.*

**Appeal from an order of the C. A., [1913] 1 K. B. 481, affirming an order of the Div. Ct. on a case stated by the Surrey Quarter Sessions, [1912] 2 K. B. 432.**

The respondents ordered that a road in their district, known as Cottimore Lane, should be made up under the Private Street Works Act, 1892, and charged the appellant as a frontager with a proportion of the expenses. The appellant objected that the lane was a highway repairable by the inhabitants at large. It was admitted that since 1864 the lane had been used both by foot passengers and by vehicles, but there was no evidence to shew how, when, or under what circumstances the lane was originally made.

The site of the lane and the adjoining lands were enclosed in 1804 by an award made in pursuance of an Inclosure Act which provided for the setting out of public and private roads by the Commrs., and enacted that all roads not set out as aforesaid should be extinguished. By the award the lane in question was not included in the roads set out by the Commrs. No public money had ever been expended in the making or repairing of the lane.

The justices found that the lane was not a public highway at the date of the coming into operation of the Highway Act, 1835, and that, although now a public highway, it was not repairable by the inhabitants at large.

The Div. Ct. and the C. A. affirmed the decision of the justices.

The H. L. dismissed the appeal.

Earl Loreburn, upon the question of fact, said that their Lordships were not satisfied that the view taken by the Courts below was wrong. Upon the question of the application of s. 23 of the Highway Act, 1835, he was of opinion that the lane was a road made by and at the expense of an individual or private person within the meaning of the section. The owners of the soil allowed it to be used as a road, and the adjoining occupiers spent money in repairing it. Sect. 23 was not confined to cases in which the same person made the road and spent the money, or to cases in which some person made the road in the sense of physically constructing it, nor was it necessary

**HIGHWAY (Dedication)—continued.**

to prove that any individual actually spent money on the road. The section merely meant that the individual making the road was to defray whatever expense was necessary.

*Per Lord Dunedin: Eyre v. New Forest Highway Board* (1892) 56 J. P. 517, and *Reg. v. Thomas* (1857) 7 E. & B. 399, doubted. *CABABÉ v. WALTON-ON-THAMES U. D. C.* - *H. L. (E.)* [1913] W. N. 369

*Subsoil—Gas pipes—Power to gas company to break up street—Ownership—“Land not dedicated to public use”—Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6, 7—Worthing Gas Act, 1907 (2 Edw. 7, c. 22, s. 1), ss. 5, 7, 39.*

By s. 6 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), the undertakers were authorized to break up the soil of streets within the limits of their special Act, and to lay down pipes and other works therein for supplying gas to the inhabitants of the district.

Sect. 7 provided that nothing therein should authorize the undertakers to lay down any pipe or other works “in any land not dedicated to public use, without the consent of the owners and occupiers thereof.”

The plt. was the owner of land on either side of a road dedicated to public use, and had bored a tunnel thereunder for his own purposes. In pursuance of their statutory powers the defts. proposed to lay gas pipes and works extending to a depth of 5 feet below the surface of the road on either side of the tunnel, such pipes being carried up at right angles to the tunnel, and passing over it at a depth of 3 inches from the surface. It was agreed that 18 inches was the thickness of soil under the road reasonably necessary for the proper maintenance of the road. The question raised in the action was whether the soil to a greater depth than 18 inches from the surface was “land not dedicated to public use.”—

*Held*, that the dedication of the road to public use brought it within s. 6 of the Gasworks Clauses Act, 1847, and no part of it could, for the purposes of gas or water undertakings, be properly held to be land “not dedicated to public use” under s. 7. The proviso in that section extended only to land of which no part was dedicated to public use.

Dedication, as between the owner of the soil on the one hand and the controlling authority on the other, involves not merely the occupation by the public of the surface, but also the dedication of so much of the subjacent soil as is necessary for the proper maintenance of the surface as a road or street. *SCHWEDER v. WORTHING GAS LIGHT AND COKE CO. (No. 2)*

*Eve J.* [1913] 1 Ch. 118; 82 L. J. (Ch.) 71; 11 L. G. R. 17; 107 L. T. 844

**Extraordinary Traffic.**

*See below, Repairs.*

**Footpath.**

*See above, Dedication, and below, Repairs.*

**HIGHWAY—continued.****Land Tax.**

—Redemption—Exoneration—Land abutting on highway—Presumption that soil of highway passes a medium filum.  
*See LAND TAX.*

**Locomotives.**

—Heavy motor car—Bridge—Prohibition.  
*See BRIDGE.*

**Obstruction.**

*Vehicle—Not allowing free passage—Offence—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 78.*

Sect. 78 of the Highway Act, 1835, makes it an offence for any person not to keep his wagon on the left or near side of the road for the purpose of allowing the free passage of other vehicles.

A wagon driven by the appellant was so much beyond the centre of the road that there was not room for a motor car which approached from behind to pass the wagon on its off side. The appellant signalled to the driver of the motor car to pass him on his near side and it did so. The motor car was the only other vehicle on the road at the time, and its driver was not inconvenienced or delayed by the action of the appellant:—

*Held*, that the appellant had not committed an offence under the above section. *NUTTALL v. PICKERING - Div. Ct.* [1913] 1 K. B. 14; 82 L. J. (K. B.) 36; 10 L. G. R. 1075; 23 Cox, C. C. 263; 107 L. T. 852; 77 J. P. 30

**Repairs.**

—Bridge.

*See BRIDGE.*

*Extraordinary traffic—Conveyance of materials for erection of joint asylum in county borough for councils of the borough and county—Right of county borough council to sue clerk of visiting committee of asylum—Traffic conducted “by or in consequence of whose order”—Method of arriving at cost of repairing damage—Deduction of ordinary repair and “betterment” of road—Third party—Costs.*

The visiting committee of a lunatic asylum consisted of twenty members, seventeen of whom were elected by the county to represent the county and three were elected to represent the plds., the corporation of a county borough within the county. For the purpose of erecting the asylum large quantities of materials were conveyed in wagons drawn by traction engines and otherwise over the roads in the borough by the contractors employed by the visiting committee of the asylum. The specification which formed part of the contract entered into by the committee, acting by their clerk, the deft., with the contractor, contained a clause that the contractor agreed to indemnify the visiting committee against liability in respect of damage done by extraordinary traffic.

In a claim for extraordinary expenses, Channell J. gave judgment for the plds. against the deft. and for the deft. against



**HIGHWAY (Repairs)—continued.**

the contractor, who had been made a third party (10 L. G. R. 250).

The third party appealed :—

*Held*, after hearing argument, that this was a case which might in the interest of all parties be settled, and the parties accordingly arrived at a settlement on the terms that the judgment as between the plts. and the deft. and as between the deft. and the third party be set aside without costs, the plts. and the deft. to pay back one-third each of the total costs already paid by the third party to them and the damages paid to the plts. to be retained by them. **COLCHESTER CORPORATION v. GERR ; KING, THIRD PARTY**

C. A. 11 L. G. R. 349 ; 77 J. P. 181

*Extraordinary traffic—Damage to country road by traction engines—Alternative route—Allegation that traffic rendered necessary by condition of alternative route—Whether motives of persons leading traffic material.*

In an action brought to recover damages for extraordinary expenses incurred by a highway authority in the repair of a country road alleged to have been injured by extraordinary traffic, it was alleged by the defts., in justification of their driving traction engines along the road in question, that an alternative route had to be abandoned, because it was dangerous and inconvenient for traction engines, and that it was so rendered dangerous and inconvenient by the action of the plt. authority in laying granite setts at a particular corner :—

*Held*, that in deciding whether extraordinary traffic has been led, it is not material to consider (a) the motive of the persons who lead extraordinary traffic ; (b) whether there is or is not an alternative route ; (c) whether a way or road theretofore used has been rendered impossible to use by the action of the highway authority. The Court has simply to look at the phenomena as they occur on the road in question ; to see what the road is, and to decide whether the traffic brought to it is extraordinary traffic. **WORSBOROUGH U. D. C. v. BARNSELY BRITISH CO-OPERATIVE SOCIETY, LD.** - - - **Rowlatt J. 77 J. P. 450**

*Extraordinary traffic—Excessive weight—Surveyor's certificate—Comparable highways—Betterment as distinguished from repair—Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), ss. 23.*

By their statement of claim a local authority claimed that damage by extraordinary traffic, due to carriage of stone from a quarry by steam traction, had been done to a particular highway upwards of five miles in length, certain sections of which, owing to the difference of the gradients, had suffered greater damage than the rest :—

*Held*, that it was unnecessary that the surveyor should, in giving his certificate, certify the exact parts of the highway damaged so long as it appeared that, when he gave it, he was considering the particular stretch of road in question.

In the summer of 1912 the actual expense

**HIGHWAY (Repairs)—continued.**

of repair of the five miles was 1270l., and the average expenditure throughout the three preceding years was some 500l. leaving the 770l. claimed. The average cost of repairs per mile of other highways in the district for the three preceding years was 52l. 14s. 2d. per mile :—

*Held*, that these highways were not comparable with the road in question, being so much cheaper to maintain.

*Held*, further, that since there were no comparable highways in the district, the principle to be applied was that the defts., the quarry owners, were liable for the excess of the amount actually spent in repairing the damage done over and above the amount which would have been spent in repairing damage done by traffic other than that of the defts. But regard must be had to the wet winter of 1911-12, which raised the ordinary expenditure ; and to the circumstance that this ordinary expenditure had been steadily rising for some years owing to the extra burden of traffic and higher standard of road maintained, and that the road had been not merely repaired but improved. Therefore the defts. ought not to pay for betterment as distinct from repairs, so far as it would lessen the ordinary cost of repair in subsequent years. **LEDGBURY R. D. C. v. COLWALL PARK QUARRIES CO., LD.**

**Scrutton J. 11 L. G. R. 841 ; 108 L. T. 1002 ; 77 J. P. 198**

*Extraordinary traffic—Extraordinary expenses—Person "by or in consequence of whose order" traffic was conducted—Liability of contractor supplying bricks—Allowance for betterment of road—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12, sub-s. 1 (c).*

S., a building owner, bought bricks for the erection of a house from L., a brickmaker, and insisted as a term of the contract that they should be delivered in trucks drawn by traction engines. L. accepted the order to deliver the bricks at the site by that mode of conveyance and contracted with E. to supply the engines and trucks, and E. selected the route to be taken from the brickfield to the site of the house. This traffic damaged part of the road over which it was conducted, and the local authority sued L. for damages suffered by reason of extraordinary traffic or excessive weight :—

*Held*, that L. was liable in damages as the person "by or in consequence of whose order" the traffic was conducted. **WINDLESHAM U. D. C. v. SEWARD AND OTHERS ; EYBLEIGH, THIRD PARTY**

**Div. Ct. 11 L. G. R. 324 ; 77 J. P. 161**

— Extraordinary traffic on highway—Particulars of average expense of highways in neighbourhood—Particulars of average expense of the highway damaged.  
See PARTICULARS.

*Footpath—Dangerous places—Public footpath running along bank of river—Erosion of bank—*

**HIGHWAY (Repairs)—continued.**

*Dung* to public using footpath—Liability of owner of bank to repair — "Bank" — Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 30.

A public footway ran along the top of a high bank of the river Mersey. By the action of the weather and by erosion caused by the river eating away the bank, portions of the bank upon which the footpath ran were washed away, portions of the footway fell into the river, and further portions of the bank were threatening to fall into the river. The footway was thus rendered dangerous to persons lawfully using it, the appellants were the owners of parts of the bank and of the site over which the footway ran; but there was no obligation upon them to repair the footway *ratione tenuræ*.

The local authority gave the appellants notice, under s. 30 of the Public Health Acts Amendment Act, 1907, to repair and protect the bank so as to prevent any danger therefrom. The appellants did not comply with the notice, and the respondents, having repaired the bank by doing work which was necessary to protect the public from danger when using the path, sought to recover the expense from the appellants under s. 30, sub-s. 2 :—

*Held*, that the locus in quo was not a "bank" within the meaning of s. 30, and that therefore the appellants were not bound to comply with the notice. **CHESHIRE LINES COMMITTEE v. HEATON NORRIS U. D. C.** Div. Ct. [1913] 1 K. B. 325; 81 L. J. (K. B.) 1119; 10 L. G. R. 972; 107 L. T. 348; 76 J. P. 462; 28 T. L. R. 576

See also above, Dedication.

**Telegraph.**

— Placing posts and wires in or across street or public road—Consent—Highway not repairable by inhabitants at large.  
See TELEGRAPH.

**HORSE**—Negligence—Breach of duty—Horse and carriage hired by husband—Vicious horse—Injury to wife—Knowledge of owner of horse—Control of carriage—Acceptance of wife as passenger.  
See NEGLIGENCE.

— Workmen's compensation — Remedy both against employer and stranger—Award against employer—Damage from kick of horse—Liability of owner—Scienter.  
See WORKMEN'S COMPENSATION.

**HORSES**—Order of Board of Agriculture and Fisheries (8924).—Horses (Importation and Transit) Order of 1913, Sept. 25, 1913. 11 L. G. R. Orders, 94.

**HOSPITAL**—Charity—Consecrated chapel—Rebuilding—New chapel—Effect of consecration.  
See CHARITY.

**HOTCHPOT**—Settlement by will—Construction—Several settled funds — Trusts by reference.  
See SETTLEMENT AND WILL.

**HOUSE DUTY**—School buildings — "Offices belonging to any dwelling-house."  
See REVENUE.

**HOUSE OF COMMONS**—Disqualification—Contract on account of public service—Action for penalties—Venue—Affidavit of informer—Claim based on wrong statute—Amendment of writ.  
See PARLIAMENT.

**HOUSE TAX ACT, 1808.**  
See REVENUE.

**HOUSING, TOWN PLANNING, &c., ACT, 1909.**  
See LANDLORD AND TENANT—Lease, and LOCAL GOVERNMENT.

**HUMBER**—Ship—Collision—Compulsory pilotage—Exemption—Putting into the Humber for "stores" only.  
See SHIPPING—Collision—Compulsory Pilotage.

**HUSBAND AND WIFE**—Contract—Public policy—Separation deed—Agreement providing for immediate reconciliation and for the contingency of future separation.

An agreement entered into between a husband and a wife while living separate and apart, providing for their resuming cohabitation, and further that, in the event of a future separation, provision should be made for the wife, is legal and enforceable.

*Macmahon v. Macmahon* [1913] 1 I. R. 154, and *Purser v. Purser* [1913] 1 I. R. 422, affirmed. *MACMAHON v. MACMAHON. PURSER v. PURSER* — C. A. (Ir.) [1913] 1 I. R. 428

— Criminal law—Presumption that wife is acting under the coercion of her husband.  
See CRIMINAL LAW—Evidence.

— Divorce.  
See DIVORCE.

— Negligence — Breach of duty — Horse and carriage hired by husband — Vicious horse—Injury to wife—Knowledge of owner of horse—Control of carriage—Acceptance of wife as passenger.  
See NEGLIGENCE.

— Poor law—Maintenance—Summary Jurisdiction (Married Women) Act, 1895.  
See JUSTICES—Criminal Law.

— Probate—Practice—Two persons dying together—Survivorship—Wills—Probate, or administration with will annexed—Form of oath to lead grants.  
See PROBATE.

— Settlement—Divorce—Decree nisi—Covenant to settle after-acquired property—  
See SETTLEMENT—Covenant to Settle.

*Wife's property — Separate income of wife received by husband—Whether gift to husband by wife.*

Where husband and wife are living together in amity, and the husband, with the wife's consent, receives her separate income, he is, in the absence of an agreement express or to be inferred from the circumstances, taken to receive it in his capacity as head of the

**HUSBAND AND WIFE**—*continued.*

family and is entitled to deal with it, as he pleases, and is not liable to account for it to his wife or to repay any part of it to her. It is a question of fact whether an agreement has been arrived at which rebuts the presumption arising from the receipt of the wife's money by the husband.

A wife's separate income was, with her consent, received by her husband:—

*Held*, on the evidence, that the money was only paid to the husband for the purpose of investment and that it remained the wife's property. *In re YOUNG. YOUNG v. YOUNG*

Warrington J. 29 T. L. R. 391

**ILLEGALITY**—Contract—Restraint of trade—Illegality not pleaded—Duty of Court.  
*See RESTRAINT OF TRADE.*

**ILLEGITIMATE (POSTHUMOUS) CHILD**—Workmen's compensation—Dependant—Evidence—Promise to marry—Intention to maintain.  
*See WORKMEN'S COMPENSATION—Dependants.*

**ILLEGITIMATE CHILDREN**—Exclusion of—Will—Construction—Gift to "children."  
*See WILL.*

**IMMORAL ACT**—Criminal suit under Clergy Discipline Act, 1892—Appeal in matter of law.  
*See ECCLESIASTICAL LAW.*

**"IMPRACTICABLE"**—Workmen's compensation—"Average weekly earnings."  
*See WORKMEN'S COMPENSATION.*

**IMPRISONMENT**—Criminal law—Libel—Imprisonment in default of finding sureties—Jurisdiction.  
*See CRIMINAL LAW—Sentence.*

—False imprisonment.  
*See FALSE IMPRISONMENT.*

—Summary jurisdiction—Fine—Default of sufficient distress—Licensing (Consolidation) Act, 1910.  
*See JUSTICES—Criminal Law.*

—Workmen's compensation—Incapacity—Supervening incapacity not due to accident—Imprisonment—Right to compensation not affected.  
*See WORKMEN'S COMPENSATION.*

**IMPROVEMENT COMMISSIONERS**—Special Act—Corporation—Contract not under seal—Executed consideration—Contract to pay implied from acceptance of benefit.  
*See LOCAL GOVERNMENT—Urban District Council.*

**"IMPROVEMENTS"**—Collieries—Works required by Coal Mines Act, 1911—Payment out of capital.  
*See SETTLED LAND.*

**IN CAMERA**—Hearing—Divorce—Nullity—Publication of proceedings after decree—Contempt of Court.  
*See DIVORCE.*

**IN FORMA PAUPERIS**—Application by defendant for leave to appeal—Opinion of counsel.

*See APPEAL—Divisional Court.*

**INCAPACITY**—Workmen's compensation.  
*See WORKMEN'S COMPENSATION.*

**INCOME**—Capital or—Shares in company—Reserve fund—Bonus dividend.  
*See SETTLEMENT and WILL.*

—Gift of—Will—Construction—Determinable life interest.  
*See WILL.*

**INCOME TAX.**  
*See REVENUE.*

—Landlord's property tax—Payment by tenant—Omission to deduct from next payment of rent—Right to deduct from future payments.  
*See LANDLORD and TENANT—Landlord's Property Tax.*

**INCREMENT VALUE DUTY**—Sale of fee simple—Mode of calculation.  
*See REVENUE.*

**INDEMNITY**—Administration—Insolvent estate—Receiver—Executor surety for testator—Right of indemnity—Right of retainer.  
*See EXECUTOR.*

—County court—Taxation of costs—Indemnity as to costs incurred "in and about any action."  
*See COUNTY COURT.*

—Guarantee—Oral "promise to answer for the debt of another"—Guarantee of debt of a company—Debenture of company held by guarantor.  
*See GUARANTEE.*

—Insurance of debentures—Re-insurance—Contract of indemnity—Liquidation—Scheme of arrangement—Limit of liability of re-insurer.  
*See INSURANCE—Mortgage.*

—Mortgage—Foreclosure—Parties.  
*See MORTGAGE—Foreclosure.*

—Right of principal to indemnity by surety against liability—Will—Construction—"Debts."  
*See PRINCIPAL AND SURETY.*

—Shipping—Collision—Towage—Damage to cargo—Indemnity claimed from third party—Construction of contract—Implied term.  
*See SHIPPING—Collision.*

—Stockbroker—Right to indemnity.  
*See STOCK EXCHANGE.*

—Trade union—Slander on officer as such—Action by officer—Indemnity by union against costs—Ultra vires.  
*See MAINTENANCE.*

—Workmen's compensation.  
*See INSURANCE—Employers' Liability, and WORKMEN'S COMPENSATION.*

## INDIA.

*Administration*, col. 254.  
*Agreement to Finance*. See below, *Practice*.  
*Assignment*. See below, *Transfer of Property Act, 1900*.  
*Attachment*. See below, *Indian Contract Act, 1872*, and *Practice*.  
*Bengal Land Revenue Sales Act, 1868*, col. 254.  
*Burma Act IV. of 1898*. See below, *Imperial Government of India Act, 1858*.  
*Central Provinces Government Wards Act*. See below, *Court of Wards*.  
*"Coercion."* See below, *Indian Contract Act, 1872*.  
*Costs*. See below, *Criminal Law*.  
*Court of Wards*, col. 255.  
*Criminal Law*, col. 255.  
*Death of Sole Plaintiff*. See below, *Practice*.  
*"Evidence."* See below, *Indian Evidence Act*.  
*"Final."* See above, *Bengal Land Revenue Sales Act, 1868*.  
*Foreign Judgment*. See FOREIGN JUDGMENT.  
*Gift, Deed of*, col. 256.  
*Hindu Joint Family*, col. 256.  
*Hindu Will*. See below, *Will*.  
*Imperial Government of India Act, 1858*, col. 256.  
*Indian Contract Act, 1872*, col. 256.  
*Indian Evidence Act*, col. 257.  
*Insurance (Fire)*. See INSURANCE—*Fire*.  
*Limitation*. See below, *Mortgage and Practice*.  
*Minor*. See below, *Practice*.  
*Mortgage*, col. 258.  
*Partition of Hindu Joint Family Estate*, col. 259.  
*Pledge*. See above, *Indian Contract Act, 1872*.  
*Policy of Insurance (Fire)*. See INSURANCE—*Fire*.  
*Practice*, col. 259.  
*Punjab Land Revenue Act, 1887*, col. 261.  
*Record of Rights*. See above, *Punjab Land Revenue Act, 1887*.  
*Review of Decision*. See above, *Bengal Land Revenue Sales Act, 1868*.  
*Sebaitship*, col. 262.  
*Secretary of State, Contract with*. See PARLIAMENT.

## INDIA—continued.

*Succession*. See above, *Sebaitship*.  
*Transfer of Property Act, 1900*, col. 262.  
*Ultra vires*. See above, *Imperial Government of India Act, 1858*.  
*Voluntary Payment*. See above, *Indian Contract Act, 1872*.  
*Wagf*. See above, *Punjab Land Revenue Act, 1887*.  
*Will*, col. 262.

## Administration.

*Inventory required by law—Approximate lump figure—Motion for inquiry—Time limit.*

By s. 98 of the Probate and Administration Act, 1881, as substituted in that Act by s. 15 of the Probate and Administration Act, 1889 (Acts of the Governor-General of India in Council), "An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession . . ."  
 By s. 2, sub-s. 4, of the Court Fees Amendment Act, 1899 (also an Indian Act), "If the petitioner does not amend the valuation to the satisfaction of the collector, the collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property: Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by . . . s. 98 of the Probate and Administration Act, 1881"—

*Held*, that the time limited in this proviso only ran from the date of the lodging of the inventory required by law, and that it could not run from the depositing of a document which omitted the details of a full and true estimate and only gave an estimated lump figure of the approximate value. *MUSAMMAT RAMESHWAR KUMAR v. THE COLLECTOR OF GAYA* - - - - - 30 T. L. R. 65

## Agreement to Finance.

See below, *Practice*.

## Assignment.

See below, *Transfer of Property Act, 1900*.

## Attachment.

See below, *Indian Contract Act, 1872*, and *Practice*.

## Bengal Land Revenue Sales Act, 1868.

*Bengal Act VII. of 1868, s. 2—Order of Commissioner—"Final"—Review of order.*

The Bengal Land Revenue Act, 1868, by s. 2, provides that the order of the Commr., upon an appeal to him under that Act, shall be "final." A Commr., upon such an appeal, made an order annulling the sale.

**INDIA (Bengal Land Revenue Sales Act, 1868)**  
—continued.

Afterwards, being of opinion that this order was wrong in law, he reviewed it, and made an order upholding the sale :—

*Held*, that the Commr. had no power so to review his order. **BAIJNATH RAM GOENKA v. NAND KUMAR SINGH**

P. C. L. R. 40 Ind. App. 54

**Burma Act IV. of 1898.**

*See below*, Imperial Government of India Act, 1858, s. 65.

**Central Provinces Government Wards Act (XVII. of 1885), ss. 6 and 18.**

*See below*, Court of Wards.

**"Coercion."**

*See below*, Indian Contract Act, 1872.

**Costs.**

*See below*, Criminal Law.

**Court of Wards.**

*Central Provinces Government Wards Act (XVII. of 1885), ss. 6 and 18—Joint Hindu family—Managing member ward—Power to mortgage joint family property—Sanction of Chief Commissioner.*

*Held*, (1.) that under the Central Provinces Government Wards Act (XVII. of 1885), s. 6, since repealed by Act XXIV. of 1899, the Court of Wards, upon the application of the managing member of a joint Hindu family, could assume the superintendence of the joint family property.

(2.) That it was not necessary under s. 18 of Act XVII. of 1885 that the actual mortgage proposed to be made by the Court of Wards should be submitted to the Chief Commr. or his previous sanction obtained to its precise terms. **GULABSINGH v. RAJA SETH GOKUL DAS**

P. C. L. R. 40 Ind. App. 117

**Criminal Law.***Improper admission of evidence—Costs.*

The Judicial Committee allowed an appeal from a conviction for murder on the ground that a body of wholly inadmissible evidence had been admitted in the Indian Court, and that when admitted it was used to the grave prejudice of the accused.

The rule laid down in *Johnson v. Rex* [1904] A. C. 817, that the Crown neither pays nor receives costs, unless the case is governed by some local statute or there are exceptional circumstances justifying a departure from the ordinary rule, applies to criminal as well as to civil cases. **VAITHINATHA PILLAI v. THE KING-EMPEROR**

P. C. 29 T. L. R. 709

**Death of Sole Plaintiff.**

*See below*, Practice.

**"Evidence."**

*See below*, Indian Evidence Act.

**INDIA—continued.****"Final."**

*See above*, Bengal Land Revenue Sales Act, 1868.

**Foreign Judgment.**

— Court in British India—Decree for divorce and damages against co-respondent—Co-respondent domiciled and resident in England—Action by petitioner to recover upon the decree for damages. *See FOREIGN JUDGMENT.*

**Gift—Deed of.**

*Pardanishin woman—Proof of intelligent execution—Independent advice—Oudh.*

Where a person claims under a deed of gift from a pardanishin woman, the onus is on the claimant to shew that the transaction had been explained to her and that she understood it, but there is no rule of law that such a gift cannot stand unless the woman had independent advice. If the giving of independent advice would not really have made any difference in the result, the deed ought to stand. **KALI BAKHSH SINGH AND OTHERS v. RAM GOPAL SINGH AND OTHERS** : 30 T. L. R. 138

**Hindu Joint Family.**

*See above*, Court of Wards, and below, Partition of Hindu Joint Family Estate and Practice.

**Hindu Will.**

*See below*, Will.

**Imperial Government of India Act, 1858.**

*Burma Act IV. of 1898, s. 41 (b), ultra vires—Remedy of the subject against the Government in respect of land—Imperial Government of India Act, 1858, s. 65.*

Sect. 41 (b) of Act IV. of 1898 (Burma), which enacts that no civil Court is to have jurisdiction to determine a claim to any right over land as against the Government, is ultra vires, as being in contravention of s. 65 of the Government of India Act, 1858. That section provides that there is to be the same remedy for the subject against the Government as there would have been against the East India Co., and it cannot be repealed by an Indian Legislature :—

*Held*, that a suit for damages for wrongful interference with the plt.'s property in land would have lain against the East India Co.

*Peninsular and Oriental S. N. Co. v. Secretary of State for India* (1861) 5 Bomb. H. C. R., appendix, approved. **SECRETARY OF STATE FOR INDIA IN COUNCIL v. MOMENT**

P. C. L. R. 40 Ind. App. 8

**Indian Contract Act, 1872.**

*Pledgee of goods without notice of plaintiff's title—Delivery to the order of depositor not a conversion—Indian Contract Act, 1872, ss. 166, 178.*

Whatever may be the true construction of s. 178 of the Indian Contract Act, 1872, it is

**INDIA (Indian Contract Act, 1872)—continued.**

a complete defence to a suit for the delivery of the plt.'s goods, if the defts. has in good faith returned them to the order of the person by whom they were deposited without notice of the plt.'s title. The section of the Act really applicable was therefore s. 166. Here the bank was not bound to suspect dishonesty in a pledgor of good credit and reputation, merely because being a muqaddam as well as a merchant he had an opportunity of acting dishonestly. **BANK OF BOMBAY v. NANDLAL THACKERSEYDASS** - P. C. L. R. 40 Ind. App. 1

*Wrongful attachment of property—“Coercion” —Suit to recover money paid—Voluntary payment —Indian Contract Act, 1872, ss. 15 and 72.*

The plt. in a suit alleged by his plaint that he was the sole proprietor of certain cotton mills and their contents; that the defts., who had a money decree against a limited co., obtained thereunder an attachment against his said property for Rs. 83,005, took possession, and prevented him from working the mills; that he was, in consequence, compelled to pay to the defts., under protest, the above sum, which he claimed to recover in the suit:—

*Held*, that the word “coercion” in s. 72 of the Indian Contract Act, 1872, is used in its general and ordinary sense, its meaning not being controlled by the definition of “coercion” in s. 15 of that Act, and that the facts alleged by the plaint constituted a good cause of action. **SETH KANHAYA LAL v. NATIONAL BANK OF INDIA, LD.**

P. C. L. R. 40 Ind. App. 56

**Indian Evidence Act.**

*Usufructuary mortgage—Construction —Express agreement cannot be varied by preliminary negotiations—Indian Evidence Act, s. 92.*

Where there is an express and unambiguous stipulation in a mortgage deed that the profits of the mortgaged property shall belong to the mortgagee in lieu of interest, it cannot be varied or contradicted by reference to preliminary negotiations. Under the Indian Evidence Act effect must be given to it and the mortgage cannot be treated as usufructuary only in form.

*Held*, also, that a written but unregistered agreement, made after the mortgagor had given up possession under a lease by the mortgagee, as to the mode in which the rents and profits should be dealt with, was inadmissible in evidence under Act III. of 1877. **SAIYID ABDULLAH KHAN v. SAIYID BASHARAT HUSAIN**

P. C. L. R. 40 Ind. App. 31

**Insurance (Fire).**

*See INSURANCE—Fire.*

**Limitation.**

*See below, Mortgage and Practice.*

**Minor.**

*See below, Practice.*

**INDIA—continued.****Mortgage.**

*Redemption — Limitation — Acknowledgment by widow and daughter of mortgagee—Junction of mortgagor and mortgagee interests—Effect of acknowledgment—Limitation Act, 1859 (XIV. of 1859), s. 1, clause 15—Limitation Act, 1877 (XV. of 1877), ss. 2, 19, and Sched. II., art. 148—General Clauses Act (I. of 1868), s. 6.*

The appellant in 1907 instituted a suit for the redemption of a usufructuary mortgage made in 1842. In 1866 and 1867 the widow and daughter respectively of the mortgagee executed deeds of sale of the mortgagee interest which acknowledged the existence of the mortgage. For the period between 1883 and 1898 there was under these deeds of sale a junction of the mortgagor and mortgagee interests in one person. The defts. to the suit were the sons of the mortgagee's daughter above referred to:—

*Held*, (1.) that the deeds of 1866 and 1867 were neither of them effectual acknowledgments within the Limitation Act, 1877, s. 19, since they were not made by a person “through whom” the defts. claimed title;

(2.) that the statutory time continued to run during the period between 1883 and 1898;

(3.) that although the deeds of 1866 and 1867 would have been effectual acknowledgments within the Limitation Act, 1859, s. 1, clause 15, no title was thereby conferred, and the application of the Limitation Act, 1877, was not prevented by s. 2 of that Act or by the General Clauses Act, 1868, s. 6. **LALA SONI RAM v. KANHAIYA LAL**

P. C. L. R. 40 Ind. App. 74

*Redemption—Limitation Act, 1877 (Act XV. of 1877), s. 19—Acknowledgment—Receipt in collector's book—Damdupat—Civil Procedure Code, 1882, s. 209—Discretion to allow interest.*

In 1793 a desai mortgaged with possession certain desaigiri dastur and pasakta lands. In 1843 the persons in whom the mortgage rights were then vested received the desaigiri dastur from the Government. The payment was entered in the collector's book, the recipients, through whom the appellants claimed, being described as the mortgagees of the desai. To this entry the recipients signed a receipt:—

*Held*, that this receipt was an acknowledgment.

*Held*, also, that the District Judge in disallowing interest after suit as contrary to the principle of damdupat must be taken to have exercised his discretion under s. 209 of the Civil Procedure Code, 1882. **MAJUMDAR HIRALAL ICHHALAL v. DESAI NARSILAL CHATUR-BHUJ DAS** - P. C. L. R. 40 Ind. App. 68

*Statute of limitations — Mortgage — Sale — Immovables—Proceeds in hands of wrong-doer—Suit against wrong-doer—Period of limitation —Indian Limitation Act, 1877, Sched. II., arts. 120, 132, Bengal.*

By art. 132 of the Second Sched. to the Indian Limitation Act, 1877 (Indian Statute), a suit “to enforce payment of money charged upon immovable property” must be brought

**INDIA (Mortgage)—continued.**

Within twelve years from the time when the money becomes due.

By art. 120 a "suit for which no period of limitation is provided elsewhere in this Schedule" must be brought within six years from the time when the right to sue accrues.

The appellants advanced money on mortgage of immovable property in India, and the respondents advanced money on a second mortgage. The appellants having subsequently obtained a decree for the sale of the property, the property was sold, and the appellants wrongfully obtained a balance over and above the amount due to them, with knowledge that such balance was affected with a charge to the respondents. The respondents, at a date more than six but less than twelve years after the money became due to them, brought a suit against the appellants to recover the surplus sale proceeds :—

*Held*, that the suit was a suit "to enforce payment of money charged upon immovable property" within art. 132 and was therefore brought in time. **BARHAMDEO PRASAD AND ANOTHER v. TARA CHAND - 30 T. L. R. 143**

— Usufructuary—Mortgage.

*See above, Indian Evidence Act.*

**Partition of Hindu Joint Family Estate.**

*Intention to separate must be clearly expressed*

— Separation from commensality and joint worship.

Separation from commensality and joint worship does not necessarily effect a division of a joint undivided Hindu estate. An intention by one member of a joint family to separate himself and to enjoy his share in severalty, will have that effect, only if it is unequivocal and clearly expressed; and it must depend upon the facts of each case whether partition is effected thereby.

Where separation from commensality and joint worship between two brothers was shewn to have arisen from a difference in their religious opinions, and there was evidence of conduct inconsistent with partition of title or with exclusion from joint enjoyment :—

*Held*, that a severance was not proved. **PANDIT SURAJ NARAIN v. PANDIT IKBAL NARAIN P. C. L. R. 40 Ind. App. 40**

**Pledge.**

*See above, Indian Contract Act, 1872.*

**Policy of Insurance (Fire).**

— Damage done by water.

*See INSURANCE—Fire.*

**Practice.**

*Attachment—Death of judgment debtor—Minor son unrepresented—Irregular sale—Petition by mother as natural guardian—Competency of appeal—Code of Civil Procedure, 1882, ss. 2, 311, 588 (16), 594, and 595.*

In execution of a decree against the appellant's father, the appellant (a minor) and others, the respondent obtained an attachment against an impartible zamindari, the property

**INDIA (Practice)—continued.**

of the appellant's father. Before the sale the appellant's father died and the zamindari descended to the appellant, who was not represented by any guardian in the attachment proceedings. The respondent purchased at the auction sale. There were irregularities in publishing and conducting the sale whereby the appellant suffered substantial injury. Upon the petition of the appellant's mother on his behalf the Deputy Commr. made an order setting aside the sale. The High Court reversed this order on the facts and confirmed the sale :—

*Held*, (1.) that, under the Code of Civil Procedure, 1882, s. 595, an appeal lay to His Majesty in Council;

(2.) that under the circumstances the appellant's mother, as his natural guardian, was entitled to petition on his behalf to set aside the sale, and that the order of the Deputy Commr. was right on the facts. **TEKAIT KRISHNA PRASAD SINGH v. MOTI CHAND P. C. L. R. 40 Ind. App. 140**

— Conditional order for possession.

*See below, Will.*

*Death of sole plaintiff before trial—Dismissal of suit for non-appearance—Jurisdiction to set aside dismissal—Making legal representative plaintiff—Limitation—Code of Civil Procedure, 1908, s. 151, Order IX., rr. 8 and 9; Order XXII., r. 3—Limitation Act, 1908, Sched. I., arts. 163 and 176.*

When a sole plt. dies before the hearing of the suit and the suit is dismissed for non-appearance, there is inherent jurisdiction in the Court to set aside the dismissal, and this is expressly preserved by the Code of Civil Procedure, 1908, s. 151. Order ix., rr. 8 and 9, do not apply in these circumstances, and the legal representative can apply under Order XXII., r. 3, to be made a party within six months of the death under the Limitation Act, 1908, Sched. I., art. 176. **RAJA DEBI BAKSH SINGH v. HABIB SHAH P. C. L. R. 40 Ind. App. 151**

*Minor—Guardian ad litem—Father and managing member guardian—Compromise—Leave of the Court—Code of Civil Procedure, 1882, s. 462.*

When the father of a minor, a member of a joint Hindu family, of which the father is the managing member, is appointed his guardian ad litem, his powers as managing member, so far as they relate to the minor's interest, are controlled by the Code of Civil Procedure, 1882, s. 462, and he cannot, without the leave of the Court, enter into any agreement or compromise on behalf of the minor with reference to the suit. **GANESHA ROW v. TULJARAM ROW P. C. L. R. 40 Ind. App. 132**

*Parties—Agreement to finance—Construction—No present interest in property—No right to sue—Defect on face of party's title—Practice—Point not raised in Court appealed from.*

The respondent entered into agreements with the proposed plts. in two intended suits

**INDIA (Practice)—continued.**

to recover possession of certain shares in five villages. The agreements provided (1.) that the respondent would be a co-sharer with the respective plts.; (2.) that he would finance the litigation; (3.) that, in the event of success, he would be entitled to proprietary possession of the share stipulated for. The suits were accordingly commenced, the respondent being joined as a plt. In each suit the plts. other than the respondent entered into a compromise whereby their claim was dismissed, and the respondent continued the litigation alone. The question of the competence of the respondent to join in or to continue the suit, though raised in the earlier stages of the litigation, was not relied on or discussed in the Court appealed from; it was, however, specifically raised in the appellant's case upon the appeals to His Majesty in Council:—

*Held*, that the agreements conferred on the respondent no then present right in the property in suit and that he was consequently not competent to join in bringing or to continue the litigation.

*Held*, also, that, this being a defect upon the face of the documents upon which the respondent's case as plt. rested, the appeals should be allowed, although the point had not been fully raised in the Court appealed from. **BASANT SINGH v. MAHABIR PERSHAD** - P. C. L. R. 40 Ind. App. 86

— Point not raised in Court appealed from.

*See above, Litigation.*

**Punjab Land Revenue Act, 1887.**

*Effect of entry in a record of rights—Land proved to be waqf or graveyard—Punjab Land Revenue Act, 1887, s. 44.*

Punjab Land Revenue Act, 1887 (Act XVII. of 1887), s. 44, enacts that “an entry made in a record of rights in accordance with the law for the time being in force . . . shall be presumed to be true, until the contrary is proved or a new entry is lawfully substituted therefor.”

In a suit to restrain the appellant from selling as his private property certain land of which he was the nominal owner, an entry in a record was to the effect that an area of which the land in suit formed part was graveyard which had been set apart for the Mussulman community, and that by user, if not by dedication, the whole area was waqf:—

*Held*, that the appellant's claim to deal with vacant portions of that area as his private property was not admissible. **COURT OF WARDS v. ILAHI BAKSH** - P. C. L. R. 40 Ind. App. 18

**Record of Rights.**

*See above, Punjab Land Revenue Act, 1887.*

**Review of Decision.**

*See above, Bengal Land Revenue Sales Act 1868*

**INDIA—continued.****Sebaitship.**

*Succession—Absence of evidence of custom—Ordinary Hindu law—Plaintiffs not competent to perform rites.*

In a suit in which the appellants claimed the sebaitship of a temple of the Ballavacharya Gosains, of which the first respondent was in possession as sebait:—

*Held*, that the rule laid down in *Gossamee Sree Greedhareejee v. Rumanlolljee Gossamee* (1889) L. R. 16 Ind. App. 137, that “when the worship of a thakoor has been founded, the sebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise or of there being some evidence of usage, course of dealing, or some circumstances to shew a different mode of devolution,” cannot be applied so as to vest the sebaitship in persons who, according to the usages of the worship, cannot perform the rites of the office. **MOHAN LALJI v. GORDHAN LALJI MAHARAJ** - P. C. L. R. 40 Ind. App. 97

**Secretary of State, Contract with.**

— Parliament—Disqualification—Contract with the Secretary of State for India in Council—Contract for the public service.

*See PARLIAMENT.*

**Succession.**

*See above, Sebaitship.*

**Transfer of Property Act, 1900.**

*Construction—Assignment of policy moneys by way of charge must be by writing—Transfer of Property Act, 1900, s. 130, sub-s. 1.*

The Transfer of Property Act, 1900, s. 130, sub-s. 1, which provides that the transfer of an actionable claim shall be effected only by an instrument in writing, applies not only to absolute assignments, but also to assignments by way of charge, and the deposit without writing of any document of title to such a claim does not create any equitable charge.

The analogies of English law cannot be applied to contradict the positive terms of an Act. **MULRAJ KHATAU v. VISHWANATH PRABHURAM VAIDYA** - P. C. L. R. 40 Ind. App. 24

**Ultra Vires.**

*See above, Imperial Government of India Act, 1858.*

**Voluntary Payment.**

*See above, Indian Contract Act, 1872.*

**Waqf.**

*See above, Punjab Land Revenue Act, 1887.*

**Will.**

*Construction—“Justice, equity and good conscience”—Practice—Suits for effectment—Conditional order for possession.*



**INDIA (Will)**—*continued.*

whose will was, under *Barlow v. Orde* (1870) L. R. 3 P. C. 161, to be construed according to "justice, equity and good conscience," provided, among other dispositions, ". . . (4.) that my private zamindari may, at my demise, descend to my eldest son and to his lawful male children; (5.) in the event of my eldest son dying without lawful male children the above mentioned private zamindari shall descend to my next male heir, and should all my sons die without lawful male children, . . . to my female children, or, in the event of their death, to the female children born in wedlock of my sons in succession." The testator died in November, 1864, leaving three sons and four daughters. The eldest son, who was fourteen years of age in 1864, died in 1900 without leaving lawful male children:—

*Held*, that the eldest son took only a life interest under the will.

Suits of ejectment were brought by the appellant claiming possession of villages and mesne profits. Upon appealing to the P. C. the appellant asked for a decree for possession conditional upon his discharging incumbrances effectual in favour of the respondents against his right to possession:—

*Held*, that, under the special circumstances of the litigation, the suits should be remitted to the High Court upon the footing that, upon the incumbrances being discharged within such time as the High Court should think reasonable, a decree for possession should be made, and that in default of payment the suits should be dismissed. **RICHARD ROSS SKINNER v. NAUNihal SINGH**

P. C. L. R. 40 Ind. App. 105

*Hindu will—Vesting of an absolute estate—Gift over invalid.*

An unqualified gift will not be cut down by subsequent words, unless they clearly have that effect.

Application of this principle to the gift of a sebatiship and debottar estate by a Hindu will. **TRIPURARI PAL v. JAGAT TARINI DASI**

P. C. L. R. 40 Ind. App. 87

**INDICTMENT.**

*See CRIMINAL LAW—Indictment.*

**INDORSEMENT**—Bill of exchange—Indorser—Irregular bill—Indorsement by way of security.

*See BILL OF EXCHANGE.*

**INFANT.**

*Contract, col. 263.*

*Fraud. See above, Contract.*

*Income Tax. See REVENUE.*

*Maintenance, col. 265.*

*Necessaries. See above, Contract and Maintenance.*

*Next Friend, col. 266.*

*Partition Action. See PARTITION.*

**Contract.**

*Fraudulent misrepresentation as to age—Loan obtained from money-lender by infant—the obligation to refund.*

**INFANT (Contract)**—*continued.*

An infant obtained a loan of money from money-lenders by a fraudulent misrepresentation that he was of full age:—

*Held*, in an action by the money-lenders, that the infant was liable to refund the money.

*Stochs v. Wilson* [1913] 2 K. B. 235, followed. **R. LESLIE, LD. v. SHIELL**  
**Horridge J. 29 T. L. R. 554**

*Fraudulent misrepresentation as to age—Necessaries—Goods sold and delivered—Bill of sale—Equitable relief—Conversion—Infants Relief Act, 1874 (37 & 38 Vict. c. 62)—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31)—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43).*

The deft., an infant, by fraudulently representing that he was of full age, induced the plt. to sell and deliver to him certain furniture and effects of which she was the owner. The goods were not necessities. They were assigned to the deft. by an instrument which was a bill of sale within the Bills of Sale Act, 1878. It contained a promise by the deft. to pay the purchase-money at a future date and a licence to the plt. to resume possession of the goods, if the price was not then paid. After the purchase the deft. sold some of the goods for 30*l.* and, with the knowledge and assent of the plt. or her agent, granted a bill of sale of the residue as security for an advance of 100*l.* He failed to pay the purchase-money on the day named for payment. After he came of age, judgment for the amount was recovered against him by default, and a receiving order following upon a bankruptcy notice was made against him. On an appeal the receiving order was set aside, without prejudice to any action the plt. might be advised to institute for the purpose of enforcing any liability to which the deft. was subject in equity, or for having obtained the goods by false pretences.

In an action in which the plt. claimed by way of equitable relief that the deft. should be ordered to pay to her the reasonable value of the goods:—

*Held*, that in the circumstances the deft. was liable to account for the 30*l.* and 100*l.* which he had got by the sale and assignment respectively of the goods, and to pay the balance thereof over and above a certain sum which he was entitled to set off.

*Evroy or Esron v. Nicholas* (1733) 2 Eq. C. Ab. 488; 1 De G. & Sm. 118, n., and *Ex parte Unity Joint Stock Mutual Banking Association, In re King* (1858) 3 D. G. & J. 63, followed.

*Held*, also, that the instrument under which the deft. acquired the goods was not a bill of sale within the Bills of Sale Act, 1882.

*Held*, further, that, notwithstanding the Infants Relief Act, 1874, the delivery of the goods to the deft. with intent to pass the property therein operated to vest the property in him, and that he was not liable for conversion of the goods.

A contract, being one entire contract, for the purchase of goods is not binding on an

**INFANT (Contract)—continued.**

infant, merely because the goods include certain articles which may be properly called necessities, if they also include a substantial number of things that are not necessities.

*STOCKS v. WILSON* Lush J. [1913] 2 K.B. 235;

82 L. J. (K.B.) 598; 20 Mans. 129; 108 L. T.

834; 29 T. L. R. 352; [1913] W. N. 84

*Necessaries—Benefit—Consideration received—Executory contract—Liability.*

A contract by an infant for necessities and for his benefit is binding on him, and cannot be repudiated by him on the ground that it is partly executory.

An infant entered into a contract to go on a tour as a professional billiard player, and this contract was held to be for necessities and for his benefit. He acted on it to some extent and received some benefits under it. Part of the contract was executory:—

*Held*, that the contract was binding on him as a whole and that he could not repudiate any part of it. *ROBERTS v. GRAY*

C. A. [1913] 1 K.B. 520; 82 L. J. (K.B.) 362; 108 L. T. 232; 29 T. L. R. 149; 57 S. J. 143

**Fraud.**

*See above, Contract.*

**Income Tax.**

— Foreign possessions — Property settled on infants — Infants not entitled to a vested interest.

*See REVENUE—Income Tax.*

**Maintenance.**

*Necessaries—Reversion in fee in real estate—Loan—Charge—Security—Judgment—Land Charges Act, 1900 (63 & 64 Vict. c. 26), s. 2.*

An infant ward of Court had no property except a reversionary interest in real estate expectant on the death of a lady aged eighty-five. The infant lived with her mother, who had no means. An allowance of 80*l.* a year had been paid to them for maintenance under an order of the Court, but the fund out of which this had been paid was now exhausted. This was a summons by the infant by her next friend asking for authority to procure annual loans for the purpose of supplying her with necessities pending the falling in of her reversionary interest, and that each such advance and the interest thereon might be declared to be a debt incurred for and on behalf of the infant for necessities, and to be payable out of her estate; and that the infant might be bound on attaining her majority to ratify and confirm such contracts and to do everything necessary to give a valid security upon her reversionary interest in case the same had not then fallen into possession:—

*Held*, that the Court was bound by the decision in *Cadman v. Cadman* (1886) 33 Ch. D. 397; that the Land Charges Act, 1900, had not altered the law in this respect, and, in the absence of any property of the infant which could be reached, the Court could not make

**INFANT (Maintenance)—continued.**

such an order. *In re BADGER, DECEASED. In re BADGER, AN INFANT. BADGER v. BADGER*

C. A. [1913] 1 Ch. 385; 82 L. J. (Ch.) 264; 108 L. T. 441; [1913] W. N. 62; 57 S. J. 339

*See WILL—Maintenance Clause.*

**Necessaries.**

*See above, Contract and Maintenance.*

**Next Friend.**

*Jockey—Earnings—Action—Father as next friend—Motive—Dismissal of action—Costs to be paid by next friend.*

*HUXLEY v. WOOTTON* - - Eve J. [1912]

W. N. 800; 29 T. L. R. 132; 57 S. J. 145

**Partition Action.**

— Request for sale—Sale for infant's benefit—Conversion.

*See PARTITION.*

**INFERENCE** — Will—Construction—Hotchpot, Provision for—Supplying omission by inference.

*See WILL—Hotchpot Clause.*

**INFIRMARY**—Chapel—Consecration.

*See CHARITY.*

**INFRINGEMENT**—Patent.

*See PATENT.*

**INITIAL LETTERS**—Trade mark—Registration—Distinctive mark—User.

*See TRADE MARK—Registration.*

**INJUNCTION**—Breach—Aiding and abetting—Threat by auctioneers to aid and abet the defendant in committing a breach of the injunction—Instructions given by defendant to auctioneers to sell—Auctioneers not parties to the action—Ex parte injunction obtained—Jurisdiction to continue it without adding the auctioneers as defendants.

The Court has jurisdiction to grant an injunction to restrain persons who are not parties to an action from aiding and abetting the deft. in the action in committing a breach of an injunction which has been obtained from the Court against such deft. by the plt. The deft. in this case was under order of the Court not to sell certain meadow grass. He nevertheless instructed some auctioneers to sell it. The deft. could not readily be found, so the plt. obtained an ex parte injunction against the auctioneers:—

*Held*, that there was jurisdiction to continue that injunction without adding the auctioneers as parties to the action.

*Seaward v. Paterson* [1897] 1 Ch. 545, followed. *HUBBARD v. WOODFIELD*

Neville J. 57 S. J. 729

— Building.

*See LOCAL GOVERNMENT—Building.*

— Building scheme — Breach of covenant — Alteration in character of district.

*See COVENANT—Building.*

**INJUNCTION**—*continued.*

— Common, Rights of—Trespass by commoner—Serious injury to waste—Suit by fellow commoner.

*See* COMMON.

— Common, Rights of —Turbarry — Estovers—Nuisance—Abatement—Excessive trespass—Cutting down trees—Damages.

*See* COMMON.

— Divorce—Permanent maintenance.

*See* DIVORCE—Maintenance.

— Documents.

*See* EVIDENCE—Privilege.

— Electric lighting—Connecting two areas of supply—Connection already existing.

*See* ELECTRIC LIGHT.

*Interim—Damages — Landlord and tenant—Firm—Ploughing up pasture land—Damage to tenant by reason of—Remoteness.*

The tenants of a pasture farm upon which they maintained a flock of sheep proposed to plough up part of the pasture land and plant corn. The landlord obtained an interim injunction restraining them from doing so, with the result that the tenants were compelled to maintain the farm as a pasture farm. They kept their sheep on the land and in consequence of a drought the sheep became depreciated in value. The interim injunction obtained by the landlord was dissolved at the hearing of the action, and in arbitration proceedings the tenants claimed as damages the net profit they would have made, if they had ploughed the land and planted corn, and also the amount by which the sheep had deteriorated in value. It was contended for the landlord that the damages arising under the second head were too remote and could not be recovered :—

*Held*, that the tenants were entitled to damages under both heads of their claim. *In re* ROBERT LEIGH PEMBERTON AND RICHARD COOPER AND ROBERT COOPER

**Banks J. 107 L. T. 716**

— Master and servant — Trade secret—Secret process — Confidential employment — Implied obligation of servant—Secret process not disclosed to Court—Power of Court to grant injunction.

*See* MASTER AND SERVANT.

— Nuisance—Fried fish shop.

*See* COVENANT AND NUISANCE.

— Patent.

*See* PATENT—Infringement.

— Restraint of trade.

*See* RESTRAINT OF TRADE.

— Sewage farm—Nuisance—Discharge of sewage on private land—Smell—Agricultural ditch—Damages.

*See* LOCAL GOVERNMENT—Drainage.

— Trade union—Rules—Parliamentary levies—Expulsion of member—Ultra vires—

Unregistered association—Parties.

*See* TRADE UNION.

— Way, Right of.

*See* WAY, RIGHT OF.

**INLAND REVENUE.**

*See* REVENUE.

**INNKEEPER**—Guest—Termination of relationship—Negligence—Goods of guest—Liability for.

The plt. who had been staying at the deft.'s hotel, paid his bill in the afternoon and directed that his luggage should be brought from his room and placed where he might get it without delay, when he returned later in the evening for it. With his knowledge the luggage was placed in the hall near where the hotel porter sat. When the plt. called for the luggage later in the evening, it was missing, and he thereupon sued the deft., claiming in respect of the loss. The county court judge held that the relationship of innkeeper and guest had ceased to exist when the plt. paid his bill, and that there was contributory negligence on the part of the plt. in the directions given by him as to the place where the luggage should be put. The plt. appealed :—

*Held*, that the questions whether the relationship of innkeeper and guest had come to an end and whether there was contributory negligence on the part of the plt. were questions of fact, and that, as there was evidence to support the findings of the county court judge, the appeal must be dismissed. **PORTMAN v. GRIFFIN**

**Div. Ct. 29 T. L. R. 225**

*Lien—Guest living at inn for long period on inclusive terms—Motor-car left by guest—Motor-car sent by innkeeper to repairer preparatory to sale before lapse of six weeks—Amount for which lien enforceable—Innkeepers Act, 1878 (41 & 42 Vict. c. 38), s. 1.*

In the absence of an express or an implied arrangement under which a visitor at an hotel resides at the hotel in some different capacity from that of other and ordinary visitors, an hotel-keeper cannot set up against such visitor that he has ceased to be responsible as an innkeeper for the loss of the guest's goods, and equally the guest or visitor cannot set up against the innkeeper that the latter has ceased to have a corresponding right of lien, and this is so even though the visitor has been so long at the hotel that the hotel proprietor could refuse to keep him any longer. The mere fact that the guest is staying at the hotel on inclusive terms does not affect the liability or rights of the innkeeper.

A guest who had been staying at the defts.' hotel left there on Dec. 21, 1910, with his hotel bill unpaid, and leaving a motor-car in the hotel garage. About three weeks thereafter the defts. took steps to have the car sold by auction, and for that purpose it was despatched in charge of their servants to London to a firm of auctioneers. On the way there it broke down and had to be towed back, when it was sent to a local repairer for the necessary repairs. After being repaired it was taken to the auctioneers, who advertised it in a London and a local newspaper on Jan. 10, 1913, and catalogued it for sale. The sale was to take place on Feb. 13—that is, more than six weeks from Dec. 21 :—

*Held*, that by sending the motor-car off the premises in these circumstances before the

**INNKEEPER**—*continued*.

expiration of the six weeks mentioned in the proviso to s. 1 of the Innkeepers Act, 1878, the defts. had not lost their lien, as they still retained charge of the car, and could have enforced its delivery to the guest if necessary.

*Held*, further, that the defts.' lien only extended to the expenses incurred by the guest in respect of food and accommodation and the cost of keeping his goods, and did not extend to sums lent to, or disbursed for, him;

But *held* that the defts. were entitled to add to their claim the cost of the repair of the car and the cost of advertising it and arranging with the auctioneers for its sale.  
CHESHAM AUTOMOBILE SUPPLY, LD. *v.* BERESFORD HOTEL (BIRCHINGTON), LD. - Lush J.  
29 T. L. R. 584

**INNUENDO**—Libel—Newspaper—Trade publication—List of decrees in absence—Erroneous entry—Imputation of insolvency.  
*See* DEFAMATION.

**INSOLVENT ESTATE**—Administration—Receiver—Executor surety for testator—Right of indemnity—Right of retainer.  
*See* EXECUTOR.

**INSPECTION (DOCUMENTS)**.  
*See* DISCOVERY.

**INSPECTION (PROPERTY)**—Practice—"Building in possession of party to action"—Tenants in common.  
*See* COUNTY COURT—*Inspection*.

**INSPECTOR**—Necessity for inspector to prove his appointment—Sale of food—Prosecution by inspector.  
*See* ADULTERATION.

**INSTALMENT**—Forfeiture, Relief against—Default in payment of an instalment of purchase-money—Time of the essence of the contract—Specific performance decreed.  
*See* FORFEITURE.

**INSURANCE (BANKERS')**, *col.* 270.

**INSURANCE (COMPANY)**. *See* INSURANCE (MARINE), INSURANCE (MORTGAGE), and REVENUE—Income Tax.

**INSURANCE (EMPLOYERS' LIABILITY)**, *col.* 270.

**INSURANCE (FIDELITY)**, *col.* 271.

**INSURANCE (FIRE)**, *col.* 272.

**INSURANCE (GUARANTEE)**, *col.* 273.

**INSURANCE (LIFE)**, *col.* 273.

**INSURANCE (LIVE STOCK)**, *col.* 276.

**INSURANCE (MARINE)**, *col.* 277.

**INSURANCE (MORTGAGE)**, *col.* 285.

**INSURANCE (MOTOR-CAR)**, *col.* 286.

**INSURANCE (NATIONAL)**, *col.* 286.

**INSURANCE (PLATE GLASS)**, *col.* 293.

**INSURANCE (BANKERS')**—*Policy covering loss by fraudulent taking of coin—Fraudulent obtaining of credit—Full amount of credit drawn out by cheques—Meaning of "all losses"—Action on policy.*

The plts., a banking co., on Mar. 16, 1912, took out a policy with underwriters at Lloyd's, indemnifying them for twelve months from April 15, 1912, from all losses by reason of cheques, bank notes, currency, or coin being taken out of their possession by fraudulent means. A slip attached to the policy provided: "This policy is to pay all losses discovered during the currency of the policy, including all claims arising in connexion with the business of the Jefferson Bank." On April 11, 1912, an account was opened with the plts. by the Z. co., and on that day the president of the Z. co. asked the plts. to discount five bills. The plts. agreed, and credited the amount of the bills less discount to the account of the Z. co. By Aug. 25, 1912, the Z. co. or its president had by cheques drawn upon the plts. obtained possession of the whole of the amount so credited, some of the cheques being cashed over the counter and some being discharged through the Clearing House. After Aug. 26, 1912, the plts. discovered that the bills were forgeries:—

*Held*, in an action on the policy, (1.) that the slip did not enlarge the scope of the policy so as to cover the loss, (a) because "all losses prima facie" only meant "all losses by risks covered by the policy" and (b) because the slip was intended to refer to the business of the Jefferson Bank, and (2.) that the honouring of the cheques by the plts. was not a taking of cheques, bank notes, currency, or coin out of their possession by fraudulent means within the policy, as it did not contemplate a case where the banker was induced by fraud to give a credit and afterwards pay out money, and that therefore the plts. could not recover on the policy. **CENTURY BANK OF THE CITY OF NEW YORK *v.* MOUNTAIN**

Pickford J. 30 T. L. R. 166

**INSURANCE (COMPANY)**. *See* INSURANCE (MARINE)—INSURANCE (MORTGAGE) and REVENUE—Income Tax.

**INSURANCE (EMPLOYERS' LIABILITY)**—*Workmen's compensation—Condition in policy—Notice of claim—Request for arbitration.*

By the terms of a policy of insurance against claims arising under the Workmen's Compensation Act, 1906, it was provided that the assured should forward to the insurance co. "every written notice or information as to any verbal notice of claim arising through any accident" covered under the policy, and should also give all such information and assistance as the co. might require to enable the co. to settle or resist any claim as the co. might think fit.

An accident having happened to a workman in the employment of the assured, proceedings under the Workmen's Compensation Act were instituted against him in the county court, and a notice of claim, accompanied by a request for arbitration, was sent to him by the registrar. The assured forwarded the notice of claim to the insurance co., but not

**INSURANCE (EMPLOYERS' LIABILITY)—***continued.*

proceedings by the assured under the policy to recover the amount of compensation which he had been compelled to pay, the co. resisted liability on the ground that the assured had not complied with the conditions of the policy by reason of the fact that he had not forwarded to them the request for arbitration. A special case for the opinion of the Court having been stated by the arbitrator:—

*Held*, that the request for arbitration was not a written notice of claim within the meaning of the policy, and that the award must be in favour of the assured. **WILKINSON v. CAR AND GENERAL INSURANCE CORPORATION, LD.**

**Banks J. 108 L. T. 512; [1913] W. N. 65**

**INSURANCE (FIDELITY) — "Issuance" of policy—Employee insured "from issuance" of policy.**

The plts., who carried on business in various towns, including Paris, requested the defts. to issue a bond guaranteeing the plts. against loss through the dishonesty of L., their Paris manager. On the application form the plts., in answer to the question "From what date is it [the bond] to be in force and for what amount?" answered thus: "From issuance, 1000L." On Mar. 7, 1912, the rate of premium was arranged, and on Mar. 8 the bond was drawn up and executed at the defts.' London office. It recited that in consideration of the premium paid to the defts. they agreed to reimburse the plts. for any loss they might sustain by the larceny or embezzlement of L. "during the period from March 8, 1912, to March 7, 1913." The premium had not then been paid, nor by the terms of the bond was its payment a condition precedent to liability upon the bond. The bond was forwarded the same day to the defts.' French agents, who on Mar. 9 sent it to the plts.' Paris office; it was, however, returned to the agents with a request that they should deliver it at the plts.' London office, and this was done on Mar. 18 with a request for a cheque for the premium. The plts.' London manager was then absent, and it was finally arranged that the matter should stand over till his return. On April 13 L. left his office in Paris, and by April 18 the plts. were in a state of suspicion about him, although not sure that his absence was incapable of a satisfactory explanation. On that day the plts.' London manager returned, and on being informed of the facts paid the premium to the defts. and obtained the bond from them. A few days later the plts. discovered defalcations by L., and made a claim on the bond, but the defts. repudiated liability on the ground that the contract was not complete till April 18, and that there had been concealment of material facts:—

*Held*, that the plts. were entitled to recover as the date of the "issuance" of the bond was by Mar. 18 at latest; a date when it was not suggested that L.'s misconduct had begun. **CHALMERS (ALLIS) CO. v. FIDELITY AND DEPOSIT CO. OF MARYLAND**

**Phillimore J. 29 T. L. R. 506**

**INSURANCE (FIRE).**

*Concealment*, col. 272.

*Condition*, col. 272.

*Damage*, col. 273.

*Insurance Money*, col. 273.

**Concealment.**

*Insurance with one company—Proposal for increased insurance with another company—Refusal of first company to continue insurance—(1) Mission to communicate fact of refusal to second company—Validity of policy.*

In Oct., 1909, the claimant effected a fire insurance policy for 2000L. with the L. Co., renewable at Michaelmas, 1910, and in Aug., 1910, with the object of getting an increased insurance for 1600L., this policy was taken to the Guardian Assurance Co. and a cover note for the 1600L. up to Michaelmas, 1910, was issued. It was arranged that the Guardian should issue a policy for the whole 3600L., and on Sept. 21, 1910, the Guardian sent a statement shewing the premium payable. At the side of this statement were the words "held covered" and underneath was the sum to be insured, 3600L., from Michaelmas, 1910, to Michaelmas, 1911, and the amount of the premium for the 1600L. up to Michaelmas, 1910, and a note in print that "No insurance is in force, until the premium is paid." On Sept. 27, 1910, the claimant became aware that the L. Co. had refused to continue the policy for 2000L. beyond Michaelmas, 1910, but this fact was not communicated to the Guardian, and on Sept. 28 the Guardian executed the policy for 3600L. from Michaelmas, 1910, to Michaelmas, 1911, and on the next day the premium was paid and the policy forwarded, and indorsed upon it was the condition that any omission to state any material fact rendered the policy void. A fire having occurred and an arbitrator having found that the fact of the refusal of the L. Co. to renew the policy was a material fact which ought to have been communicated to the Guardian:—

*Held*, that the fact that the L. Co. had refused to continue the policy was a material fact, that when this fact became known to the claimant on Sept. 27, there was no concluded contract, and that it was still the duty of the claimant to disclose such fact to the Guardian, and, having omitted to do so, the claimant was not entitled to treat the policy as a valid policy. *In re AN ARBITRATION BETWEEN YAGER AND GUARDIAN ASSURANCE CO. - Div. Ct. 108 L. T. 38; 29 T. L. R. 55*

**Condition.**

*Declaration of other insurances—Substitution of insurances for those declared—Consular Courts in Ottoman dominions.*

Under two policies in French the respondent insured against fire a building and its contents, each for 600L. The policies provided by condition III. that if the property should be insured under other contracts, subscribed either before or after the policies

**INSURANCE (FIRE) (Condition)—continued.**

attached, he was "tenu de le déclarer, par écrit, et de le faire mentionner soit dans la police même, soit par un endos inscrit par la compagnie sur la dite police." The respondent had at the time of effecting the policies concurrent insurances with other cos. for 600*l.* upon the building and 600*l.* upon the contents, and these insurances were recorded in the policies respectively. Subsequently the concurrent insurances were replaced by other insurances to a slightly larger amount, the excess being due to new decoration of the building and additions to the contents. These substituted insurances were not communicated to the appellants or indorsed on the policies:—

*Held*, that condition III. in the policies meant only that the fact that the property covered was further insured should be declared, and that the respondent had committed no breach of the condition and was entitled to recover upon the policies. NATIONAL PROTECTOR FIRE INSURANCE CO., LD. v. NIVERT P. C. [1913] A. C. 507; 82 L. J. (P. C.) 95; [1913] W. C. & Ins. R. 363; 108 L. T. 390; 29 T. L. R. 363

**Damage.**

*Insurers taking possession—Damage done by water—Damage increased during possession by the insurers—Liability of insurers—India.*

An insurance co. taking and holding under a provision in its policy possession of premises damaged by fire, does so in its own interest in order to minimize its loss, and cannot be allowed to say that the actual damage shewn at the date of giving up possession to the owner is not the consequence of the fire. Damage done by the water employed to extinguish the fire being within the loss insured, any increase to that damage, while the property is under the care of the insurers, must be borne by them. AHMEDBHoy HABIBBHoy v. BOMBAY FIRE AND MARINE INSURANCE CO., LD. P. C. L. R. 40 Ind. App. 10

**Insurance Money.**

*Mortgagee—Mortgagee of house destroyed by fire—Right to have insurance money applied in rebuilding—Priority over rights of garnisher—"Insurance effected under the mortgage deed"—Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3. c. 78), s. 83—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 23, sub-s. 3.*

SINNOTT v. BOWDEN - Parker J. [1912] 2 Ch. 414; 81 L. J. (Ch.) 832; [1913] W. C. & Ins. R. 464; 107 L. T. 609; 28 T. L. R. 594

**INSURANCE (GUARANTEE).**

See above, INSURANCE (FIDELITY), and below, INSURANCE (MARINE)—Re-insurance, and INSURANCE (MORTGAGE).

**INSURANCE (LIFE).**

*Business*, col. 274.

*Child*, col. 274.

*Income Tax*. See REVENUE.

**INSURANCE (LIFE)—continued.**

*Insurance Money*, col. 275.

*Policy*. See BANKRUPTCY.

*Premiums*, col. 275.

*Proposal and Acceptance*, col. 276.

**Business.**

*Company—Memorandum of association—Life assurance—Policies in relation to life—Ultra vires—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), ss. 1, 2, 30.*

A limited co., which by its memorandum of association was prohibited from carrying on the business of life insurance, issued policies in two different forms. By one of these policies it undertook in consideration of a certain weekly premium to pay the policyholder the respective sums of 6*l.*, 7*l.* 10*s.*, and 9*l.* at the end of five, ten, and fifteen years respectively; but, in the event of his death before the end of the fifteen years, all premiums paid since the last payment made by the co. were to be returned to his personal representatives. By the second policy it undertook, in consideration of a certain premium, to pay the policyholder a certain sum at the termination of a certain number of years; but, in the event of his death before the end of the term, a certain percentage of the premiums already actually paid was to be returned to his personal representatives:—

*Held*, that policies made in either of these two forms were policies of life assurance, and therefore, as such, ultra vires the co. JOSEPH v. LAW INTEGRITY INSURANCE CO.

C. A. 82 L. J. (Ch.) 187; [1913] W. C. & Ins. R. 337; 20 Mans. 85; 107 L. T. 53

**Child.**

*Child under five—Proposal basis of contract—Mistake of company's agent in stating material fact—Validity of provision excluding company's liability—Agent's liability suggested—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 62, 84.*

Where a policy purports to provide for a payment of a sum in excess of the maximum payable under the provisions of s. 62 of the Friendly Societies Act, 1896, on the death of a child under five, it is void in toto, and not even the sum which might legally have been assured is payable. The fact that the policy contains other provisions which are legal does not save it.

Where an insurance co.'s agent, with full knowledge of the facts, carelessly fills up the proposal form, stating the child's age inaccurately, after obtaining the proposer's signature:—

*Semble*, he must be taken as acting on behalf of the proposer, and the co. is not affected with his knowledge; also, the agent is personally liable for the amount for which the policy might legally have been issued. CONNORS v. LONDON AND PROVINCIAL INSURANCE CO.

Gibson J. (Ir.) [1913] W. C. & Ins. R. 408

**Income Tax.**

—Deductions—Premium on life insurance—Sum payable on death before, and larger sum if "live on, certain date.

See REVENUE—Income Tax.

**INSURANCE (LIFE)—continued.****Insurance Money.**

*Foreigner domiciled abroad — Life policy effected with English insurance company—Right of executor to recover policy moneys without taking out English probate—Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 19.*

By s. 19 of the Revenue Act, 1889, "where a policy of life assurance has been effected with any insurance co. by a person who shall die domiciled elsewhere than in the United Kingdom, the production of a grant of representation from a Court in the United Kingdom shall not be necessary to establish the right to receive the money payable in respect of such policy":—

*Held*, that the words "establish the right to receive" are applicable to legal proceedings in which the title to the money payable upon the policy is established.

Policies of life assurance were effected with an English insurance co. by a foreigner who died domiciled in Switzerland. By the policies respectively three directors of the co. whose hands were thereunto subscribed agreed that they would within three months after the decease of the assured should have been duly certified to the directors of the co. at their principal office pay out of the stock and funds of the co. to the executors and administrators or assigns of the assured the sums of 300*l.* and 700*l.* The plt., who was the testamentary executor by Swiss law of the assured, brought an action (without taking out probate in the United Kingdom) against the insurance co. to recover the amount due on the policies, and proved that by Swiss law he had the right to recover debts due to the estate of the deceased, including the sums due under the policies:—

*Held*, that the plt. was within the words "executors or administrators" in the policies; that he had established the right to receive the money payable in respect of the policies within the meaning of the section; and that he was therefore entitled to judgment for the amount less any English estate duties which might be payable thereon.

*Quære* whether the plt. was an assign of the deceased within the meaning of the policies. *HAAS v. ATLAS ASSURANCE CO.*

*Serutton J.* [1913] 2 K. B. 209; 82 L. J. (K. B.) 506; [1913] W. C. & Ins. R. 375; 108 L. T. 373; [1913] W. N. 64; 29 T. L. R. 307; 57 S. J. 446

**Policy.**

*See* **BANKRUPTCY—Assignment.**

**Premiums.**

*Lien — Joint tenancy — Chose in action — Policy of assurance — Premiums paid by one joint tenant at request of other—Assignment by one joint tenant—Set-off—Equity.*

*In re MCKERRELL. MCKERRELL v. GOWANS*  
*Joyce J.* [1912] 2 Ch. 648; 82 L. J. (Ch.) 22; [1913] W. C. & Ins. R. 85; 107 L. T. 404

**INSURANCE (LIFE) (Premiums)—continued.**

— Tenant for life and remainderman—Will—Trust for conversion—Power to postpone—Policies on life of *cestui que vie*—Premiums, whether payable out of capital.  
*See* **CONVERSION.**

**Proposal and Acceptance.**

*Assignment of policy—Illness of insured before payment of premium—Action by assignee.*

One Bentley signed proposals for the insurance of his life with the defts., an insurance co., and their medical officer certified that his life was a good one. The proposals were accepted, but came to an end owing to the premiums not being paid within the prescribed time. Subsequently, on Oct. 1, 1912, Bentley made fresh proposals on the same terms, the policies to begin from Oct. 18, the applicant declaring that there had been no material change in his health since the examination. The fresh proposals were accepted by the defts., who stated that the policies would be forwarded, if the premiums were received within thirty days. On Nov. 4 Bentley assigned one of the policies to the plt., and on Nov. 6 was taken ill. On Nov. 8 the plt. paid the first premium, and later on the same day Bentley died. On Nov. 12 the plt. handed the assignment to the defts.' agent. In an action on the policy it was submitted for the defts. that until the first premium was paid, the warranties as to the health of the insured remained in force:—

*Held*, that there was no contract between the deceased and the defts., and therefore the action must fail. *HARRINGTON v. PEARL LIFE ASSURANCE CO., LD.* - Div. Ct. 30 T. L. R. 24

**INSURANCE (LIVE STOCK)—Proposal basis of contract—Non-disclosure in proposal of facts known to proposer and material to the risk—Knowledge of material facts, not disclosed, acquired by agent of insuring company prior to the existence of his agency with the company—Principal and agent—Liability of principal in respect of antecedently acquired knowledge of agent—Condition in proposal that insured had not "withheld important information"—Interpretation of contract—Immaterial finding of jury.**

Every act of an agent within the scope of his employment is the act of his principal; and, consequently, all knowledge acquired by the agent, when acting within the scope of his authority, is the knowledge of his principal; but knowledge acquired by the agent antecedently to his becoming agent to the principal ought not to be imputed to the latter, and the recollection or forgetfulness of the agent of matters known to him previous to that relation ought not to affect the liability of the principal, except in cases where the principal purchases the previously obtained knowledge of the agent in relation to a particular subject-matter; or where, from his position and relationship to the principal, the agent is the agent of his principal "to know or to inquire."

*Dresser v. Norwood* (1864) 17 C. B. (N.S.) 466, distinguished.

S., a station-master at a provincial town, acted as local agent for several insurance cos. In 1907

**INSURANCE (LIVE STOCK)—continued.**

the plt. insured with one of these cos., the A. and N., through S. as that co.'s agent, a stallion horse, valuable for stud purposes, but suffering from an incurable malformation of the forelegs. In Feb., 1908, the A. and N. Co. refused to re-insure the stallion, and that refusal was communicated to the plt. and to S., who at that time had not become agent for the deft. co. In 1909, S. having become agent of the deft. co., the plt. agreed to insure the stallion with that co. through S., and a proposal for that insurance was signed by the plt. in Oct., 1909. The proposal contained several questions to be answered by the proposer, and at the foot a declaration by the proposer that he warranted the truth of the statements therein declared, that he had not "withheld any important information," and agreed that the declaration and proposal should be the basis of his contract with the co. The answers in the proposal form were filled in by S., acting, to that extent, as agent for the plt.; and to portion of one of the questions, *i.e.*, "Have you had a proposal for live-stock insurance declined?" no answer was given. The policy was issued by the defts.; and on the death of the stallion, the plt. sued the defts. for the sum for which the stallion had been insured. The defence relied on was breach of condition in the contract of insurance by reason of (*inter alia*) the non-disclosure of a refusal for live-stock insurance, and, in reply, the plt. pleaded knowledge of the refusal by the defts. at the time the policy was effected, and waiver of the breach. At the trial the jury found that the physical condition of the stallion and also the previous refusal for his insurance were "important," but disagreed on the question whether important information had been "withheld." The learned judge, treating the disagreement as immaterial, entered a verdict for the defts. Upon a motion for a new trial:—

*Held*, that the knowledge of the refusal to re-insure the stallion having been acquired by S. previous to becoming the agent of the defts. could not be imputed to them, and that, the jury having found that the refusal was "important," the learned judge rightly treated the disagreement as to the withholding of important information as immaterial, that being a question of interpretation of the contract between the parties, and that the verdict entered should stand. *TAYLOR v. YORKSHIRE INSURANCE CO., LD. - Div. Ct. (Ir.) [1913] 2 I. R. 1*

**INSURANCE (MARINE).**

*Collision*, col. 278.

*Concealment*, col. 278.

*Freight*, col. 279.

*Liability, Limitation of*, col. 279.

*Loss*, col. 279.

*Perils of the Seas*, col. 281.

*Re-insurance*, col. 281.

*Risk*, col. 284.

*Sale of Goods. See SALE OF GOODS.*

*Seaworthiness*, col. 285.

*War Risk. See above, Loss.*

**INSURANCE (MARINE)—continued.****Collision.**

*Collision clause of Lloyd's policy—Construction of clause—"Collision . . . with ship or vessel"—Collision with nets of fishing vessel.*

Rules of a mutual insurance society of which the plts. were members protected the society in respect of (*inter alia*) claims for losses, damages or expenses arising from or consequent upon collision, so far as the claims were not recoverable under the usual form of Lloyd's policy with collision clause attached. The collision clause attached to the usual form of Lloyd's policy covers "collision with any other ship or vessel." The plts.' steamship came to anchor during a fog. In a clearing interval the anchor was hove on, but it was found to be foul of the nets of a fishing vessel, which apparently enveloped the steamer and were also foul of the propeller. When the fishing vessel to which the nets were attached was sighted, she was about a mile or more distant with the nets extending from her to the plts.' steamship. The hull of the plts.' steamship did not at any time come into contact with the hull of the fishing vessel. The plts. with the consent of the insurance society paid to the owners of the nets the sum to which the damage caused by the plts.' steamer to the nets and the costs and expenses in connection therewith amounted without prejudice to the question whether the insurance society was liable under its indemnity to the plts. for the loss:—

*Held*, that in the circumstances there had been no collision with a ship or vessel within the meaning of the collision clause attached to the usual form of Lloyd's policy, and that therefore the insurance society was liable under its indemnity to repay to the plts. the sum the plts. had paid to the owners of the nets. *BENNETT STEAMSHIP CO., LD. v. HULL MUTUAL STEAMSHIP PROTECTING SOCIETY, LD. - Pickford J. [1913] 3 K. B. 372; 82 L. J. (K. B.) 1003; 18 Com. Cas. 274; 109 L. T. 213; [1913] W. N. 224; 29 T. L. R. 645; 58 S. J. 14*

**Concealment.**

*Concealment—Assignment—Assignee for value without notice—"Defence arising out of the contract"—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 50, sub-s. 2.*

*WILLIAM PICKERSGILL & SONS, LD. v. LONDON AND PROVINCIAL MARINE AND GENERAL INSURANCE CO. - Hamilton J. [1912] 3 K. B. 614; 82 L. J. (K. B.) 130; 18 Com. Cas. 1; 107 L. T. 591; 57 S. J. 11*

*Freight chartered or as if chartered—Contract to supply cargo—Loss of freight—Time penalty clause—Special charter—Cancelling date—Non-disclosure—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 18.*

*SCOTTISH SHIRE LINE, LD. v. LONDON AND PROVINCIAL MARINE AND GENERAL INSURANCE CO., LD. Hamilton J. [1912] 3 K. B. 51; 81 L. J. (K. B.) 1066; 17 Com. Cas. 240; 12 Asp. Mar. Law Cas. 253; 103 L. T. 46; 56 S. J. 551*

*Over-valuation of cargo.*

The non-disclosure by the assured to the



**INSURANCE (MARINE) (Coficealment)—contd.**  
underwriters of the fact that the cargo had been largely over-valued held to avoid the policy. *GOODING v. WHITE* - *Pickford J.*  
29 T. L. R. 312

*Floating dock—"Seaworthiness admitted"—Non-disclosure of material fact—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 17, 18.*

*CANTIERE MECCANICO BRINDISINO v. JANSON AND OTHERS. CANTIERE MECCANICO BRINDISINO v. CONSTANT* - *C. A. [1912] 3 K. B. 452; 81 L. J. (K. B.) 1043; 17 Com. Cas. 232; 12 Asp. Mar. L. & Cas. 246; 107 L. T. 281; [1912] W. N. 224; 28 T. L. R. 564*

— Re-insurance.

See below, **Re-insurance.**

### Freight.

*Valued freight policy—Constructive total loss of ship—Freight subsequently earned—Clause in hull policy that underwriters not entitled to freight—Clause in freight policy for payment of freight in full on total loss, whether absolute or constructive.*

*COKER v. BOLTON* - *Hamilton J. [1912] 3 K. B. 315; 82 L. J. (K. B.) 91; 17 Com. Cas. 313; 107 L. T. 54; [1912] W. N. 207; 56 S. J. 751*

### Liability, Limitation of.

*Insurance company—Winding-up—Contributories—Mutual insurance policies—Fixed premium policies—Liabilities of policy-holders.*

*Held*, on the construction of the P. Underwriting Association's memorandum, that the liability of holders of mutual insurance policies issued by the association was limited to 5*l.* in respect of each policy.

*Held*, further, that the association could validly issue fixed premium policies, but that the holders of these policies had not by taking them out thereby agreed to become members of the association, and therefore that they were not properly put on the list of contributories in the winding-up of the association. *W. R. CORFIELD & Co. v. BUCHANAN AND ANOTHER—SAME v. SAME; JOHN CORY & SONS, LD. v. MARITIME INSURANCE CO., LD., AND ANOTHER*

*H. L. (I.) 29 T. L. R. 258*

### Loss.

*Actual total loss—Constructive total loss—War—Detention of ship—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 57, sub-s. 1; 60.*

A steamship was chartered to carry steam coal from Newport to Constantinople. The plts. insured her at Lloyd's against seizure and detention, the policy being expressed to be on hull and machinery. After she sailed, war broke out between Greece and Turkey, and the Greeks stopped her off Tenedos and took her to Lemnos and removed the coal. On the day after she was stopped the plts. gave the underwriters notice of abandonment. The Greeks released the steamship after about six weeks' detention. The plts. brought an action on the policy for an actual or a constructive total loss, and in the alternative damages for a particular average loss;—

*Held*, that at the time of the notice of aban-

**INSURANCE (MARINE) (Loss)—continued.**

donment (1.) there was not an actual total loss, as the plts. were not then "irretrievably deprived" of her within s. 57, sub-s. 1, of the Marine Insurance Act, 1906, and (2.) there was not a constructive total loss as the words of s. 60, sub-s. 2, "unlikely that he can recover the ship," meant "unlikely that he should recover the ship within a reasonable time," and on the facts it was not likely that she would not be recovered within a reasonable time; and further that the plts. were entitled to the extraordinary expenses paid to get the ship released and also to the damages caused to the ship by reason of her detention, as a particular average loss, but that they were not entitled to damages for the depreciation in the earning capacity of the ship by reason of the detention. *POLURRIAN STEAMSHIP CO., LD. v. YOUNG* - *Pickford J. 30 T. L. R. 126*

*Insurance of cargo against capture—Constructive total loss—Anticipation of capture—Sale of cargo by assured.*

By a policy of marine insurance the plts., who were Russian subjects, insured a cargo of salt beef with the defts. at and from San Francisco to Vladivostok against (inter alia) capture. During the currency of the policy war between Russia and Japan broke out, and the Japanese fleet was in the Pacific and was stopping and capturing vessels. The Japanese were also blockading Vladivostok. The defts. telegraphed to the plts. to the effect that if the cargo were sent to Vladivostok via Nagasaki, they would take up the position that the plts. deliberately caused any loss occasioned by the perils insured against. The plts.' representatives in San Francisco, who were not desirous of increasing the loss to the underwriters, proposed that the cargo should be discharged at San Francisco and sold elsewhere, and ultimately notice of abandonment was given to the underwriters, who refused to accept it:—

*Held*, that the fact that it was anticipated that if the cargo went forward, it would be lost by capture did not in the circumstances constitute a constructive total loss, inasmuch as the actual cause which must eventually have produced the peril insured against had not begun to operate.

*The Knight of St. Michael [1898] P. 30, and Butler v. Wildman (1820) 3 B. & Ald. 398, distinguished. KACIANOFF v. CHINA TRADERS INSURANCE CO., LD.* - *Pickford J. [1913] 3 K. B. 407; 18 Com. Cas. 290; 109 L. T. 365; 29 T. L. R. 642*

*Loss—Captain's effects—Total loss of ship—Clothes worn by captain and watch not lost—Amount of liability of underwriters.*

A policy of marine insurance in the sum of 100*l.* was issued by underwriters upon captain's effects, sextant, and chronometer, being against risk of total loss of vessel only. The vessel was totally lost during the currency of the policy while in port through perils insured against, namely, an explosion; and the captain's effects that were on board were destroyed. The captain at the time of the loss was on shore, and consequently the clothes he

**INSURANCE (MARINE) (Loss)—continued.**

was wearing and the watch he was carrying were not lost. The value of the effects that were destroyed was 191*l.* and of the effects that were not lost 10*l.* The plt. claimed the full amount of the policy :—

*Held*, that the subject-matter of the policy was the whole of the captain's effects, including those that the captain had temporarily removed from the ship, and that therefore the value of the goods that were not lost must be taken into account in estimating the amount of the liability of the underwriters. *ANSTEV v. OCEAN MARINE INSURANCE CO., LD.*

Pickford J. 19 Com. Cas. 8; [1913] W. N. 286;  
30 T. L. R. 5; 58 S. J. 49

See below, Re-insurance.

**Perils of the Seas.***Policy—Institute Time Clauses.*

When a ship was lying in a dock, and a boiler was being lifted by a floating crane in order to be loaded into the hold, the pin of a shackle broke and the boiler fell and damaged the ship :—

*Held*, that the damage was not recoverable under a policy of marine insurance which covered perils of the seas and included clauses 3 and 7 of the Institute Time Clauses. *STOTT (BAL TIC)*

STEAMERS, LD. v. MARTEN AND OTHERS  
Pickford J. 30 T. L. R. 85

See below, Seaworthiness.

**Re-insurance.**

*Compromise of claim—To pay as per original policy or policies, but against total or constructive total loss only—“To follow hull underwriters in event of a compromised or arranged loss being settled”—Compromise of claim for constructive total loss and alternatively for partial loss.*

A re-insurance policy contained the following clause : “Being a re-insurance and to pay as per original policy or policies, but this insurance is against the risk of the total or constructive total loss of the steamer only, but to follow hull underwriters in event of a compromised or arranged loss being settled.” The insured steamer having sustained serious damage, the owner sued the hull underwriters claiming for a constructive total loss and in the alternative for a partial loss, and that action was compromised by a payment by the hull underwriters, nothing being said as to whether they were paying in respect of the claim for a constructive total loss or in respect of the alternative claim for a partial loss. In an action on the re-insurance policy :—

*Held*, that the re-assured was entitled to recover, as there had been a compromise of a claim against the hull underwriters for a constructive total loss, notwithstanding that there had also been an alternative claim made for a partial loss. *STREET v. ROYAL EXCHANGE ASSURANCE* - Bray J. 18 Com. Cas. 284; 109 L. T. 215; 29 T. L. R. 659

*Non-disclosure of material fact — Policy “subject without notice to the same clauses and*

**INSURANCE (MARINE) (Re-insurance)—contd.**  
*conditions as the original policy”—Liability of re-insurer.*

The plts., who were underwriters, insured the hull of the S.S. *Odland* on a time policy for 500*l.*, at a premium of 6 per cent. The policy conferred upon the ship an option to navigate the Canadian lakes, in respect of which an additional premium of 3 per cent. was to be paid. The plts. re-insured with the defts. 250*l.* of the risk at the same premium of 6 per cent., but, at the time the re-insurance was effected, made no mention of the option to navigate the lakes or the additional premium. The re-insurance policy was stated to be “subject without notice to the same clauses and conditions as the original policy.” While in the lakes the ship sustained damage in respect of which the plts. paid 117*l.* 13*s.* under the original policy, and now claimed 58*l.* 16*s.* 6*d.* from the defts. as their proportion, but the defts. repudiated liability on the ground that a material fact had been concealed from them :—

*Held*, that though the option to navigate the lakes was a material fact that ordinarily should be disclosed on effecting an insurance policy, on the true construction of the particular policy, the defts. had agreed to be bound by the terms of the original policy without notice of its terms, and were therefore liable. *PROPERTY INSURANCE CO., LD. v. NATIONAL PROTECTOR INSURANCE CO., LD.*

Scrutton J. 18 Com. Cas. 119; 12 Asp. Mar.  
Law Cas. 287; 108 L. T. 104; 57 S. J. 284

*Policy “subject to same clauses and conditions as original policy . . . and to pay as may be paid thereon”—Two slips.*

In Jan., 1911, D. and W. initialled a slip agreeing to insure the *Olympic* and *Titanic* for twelve months from delivery. Shortly thereafter the plts. agreed to re-insure part of this risk. In Dec., 1911, the deft. initialled a slip for re-insuring a portion of the plts.' risk for “twelve months from expiration or delivery, clauses and conditions as original.” In Jan., 1912, the *Titanic* not having yet been delivered by the shipbuilders, D. and W. initialled another slip in the following terms : “*Olympic, Titanic*, 12 months from expiry.” No intimation was given to D. and W. or to the plts.' agent that this was intended to be anything else but what it purported to be, namely, a renewal for a further twelve months after the expiry of the first twelve months, although it had been arranged with the leading underwriter that if the same amount of insurance was obtained on the second slip as on the first, the insurance should be treated, so far as the *Titanic* was concerned, not as a renewal, but as a confirmation of the original twelve months. The same amount of insurance was in fact obtained on the second slip, although some of the underwriters were different; and before a policy was issued, an intimation was sent to some of the underwriters, but not to D. and W. or to the plts.' agent, explaining that the insurance, so far as concerned the *Titanic*, would commence from the delivery of the ship. A policy was issued

**INSURANCE (MARINE) (Re-insurance)—contd.**

by D. and W. on April 3, 1912, insuring the *Titanic* for 2500*l.* from April 2, 1912; by a policy dated April 10, 1912, the plts. re-insured D. and W.'s risk to the extent of 400*l.*; and on April 11, 1912, the deft. underwrote a policy re-insuring the plts.' risk to the amount of 80*l.* This policy contained the following clause:—"Being a re-insurance for account the Scottish National Insurance Company, Limited, subject to the same clauses and conditions as original policy or policies, and to pay as may be paid thereon." The *Titanic* having been lost on April 15, 1912, the plts. paid D. and W. under the policy of April 10, and now sought to recover from the deft. under the policy underwritten by him on April 11, 1912. The deft. contended that the initialling of the second slip had the effect of cancelling the first slip, and that there was no "original policy" such as was contemplated by the policy underwritten by him:—

*Held*, that the second slip did not cancel the first slip and that the policy of April 10 was the "original policy" referred to in the policy of April 11, and therefore that the deft. was liable. SCOTTISH NATIONAL INSURANCE CO., LD. *v.* POOLE - - - **Bray J.**

18 Com. Cas. 9; 12 Asp. Mar. Law Cas. 266; 107 L. T. 687; 29 T. L. R. 16; 57 S. J. 45

*Re-insurance policy—Construction—Intention of assured—Right of assured to recover—Marine Insurance Act, 1906* (6 *Edw.* 7, c. 41), s. 26, sub-s. 3.

By three policies of insurance dated respectively May 6, May 11, and Aug. 4, 1910, the plts. insured the ship *Kynance*. The first two policies were for 500*l.* each and covered the vessel from Newcastle, New South Wales, to port or ports on the west coast of South America. The vessel was valued at 12,000*l.*, and the risk was to continue until thirty days after arrival at final port of discharge or until sailing on next voyage. The third policy, for 1000*l.*, covered the vessel from Valparaiso and/or port or ports on the west coast of South America to the United Kingdom or Continent or the United States. The vessel was valued at 10,000*l.* Risk to commence from expiration of previous policy.

On Aug. 9, 1910, the plts. re-insured the vessel with the deft. at and from Valparaiso and/or any port or ports on the west coast of South America to the United Kingdom, Continent, or United States. The ship was valued as in original policy. The policy was stated to be a re-insurance "subject to the same terms clauses and conditions as the original policy or policies and to pay as may be paid thereon." The charterparty under which the vessel made her voyage with a cargo from Newcastle, New South Wales, to the west coast provided that she should discharge at Valparaiso, or if ordered by the charterers' agents after her arrival there, should discharge at any safe port on the west coast not north of P., and by arrangement between charterers and owners she did not discharge all her cargo at Valparaiso, but proceeded towards T., a west coast port not north of P., where she was to load a cargo under a fresh charterparty for a voyage to a European port.

**INSURANCE (MARINE) (Re-insurance)—contd.**

On her voyage from Valparaiso to T., she became a total loss. The plts., having paid the owners for a loss under the first two policies, sued the deft. on the policy of re-insurance. The deft. contended that the plts. did not intend by the re-insurance to cover any risk except that under the third policy, and adduced in support of that contention evidence of the instructions given by the plts. to their brokers (but uncommunicated to the deft.) on effecting the re-insurance:—

*Held* by the Court of Appeal (Cozens-Hardy M.R. and Kennedy L.J., Buckley L.J. doubting), that the re-insurance policy covered the plts.' risk under "original policies," and the natural meaning of the contract could not be narrowed, as applying to one only out of the three original policies by evidence of intention on the part of the plts., uncommunicated to the deft., to protect themselves only in respect of that single policy.

Decision of Bray J. affirmed.

*Lower Rhine and Württemberg Insurance Association v. Sedgwick* [1899] 1 Q. B. 179, distinguished.

The meaning of s. 26, sub-s. 3, of the Marine Insurance Act, 1906, considered. RELIANCE MARINE INSURANCE CO. *v.* DUDER

C. A. [1913] 1 K. B. 265; 81 L. J. (K. B.) 870; 18 Com. Cas. 227; 12 Asp. Mar. Law Cas. 223; 106 L. T. 936; [1912] W. N. 156; 26 T. L. R. 469

**Risk.**

*Policy covering transit—Conclusion of transit—Steel castings—Damage—Action on policy.*

The plt., a Hamburg shipping co., ordered a new cast-steel stern frame for a steamer and had a policy of marine insurance effected on it with the deft. and other underwriters at Lloyd's. The policy was expressed to be "against all risks, especially including breakage and damage done and received through loading and discharging, irrespective of percentage." It was further provided by clauses attached to the policy that it should include "all risks of craft and/or raft and/or of any special lighterage without recourse against lightermen . . . of fire, transhipment, landing, warehousing, and reshipment if incurred, and whilst waiting shipment and/or reshipment, and all other risks and losses by land and water from the time of leaving the warehouse at point of departure until safely delivered into warehouse or other place for which the goods have been entered, or in which it is intended they shall be lodged, whether previously discharged or landed elsewhere within the port or place of destination or not." The casting was shipped from West Hartlepool to Hamburg and discharged on the quay on June 14. At that time the steamer on which the stern frame was to be fitted was at Port Said, but she was expected at Hamburg. Arrangements were made on June 27 with the Vulcan Works Co. to fit the frame, and this co. transported it in a lighter to their quay. While it was being lifted from the lighter to their quay it struck the quay wall and was so damaged as to be useless. The plts. claimed that there had been a total loss by a peril insured against:—

*Held*, that the casting was not in transit at

**INSURANCE (MARINE) (Risk)**—*continued.*

the time when the loss occurred, and therefore the plts. could not recover on the policy.  
**DEUTSCH-AUSTRALISCHE DAMPSCHIFFSGESSELLSCHAFT v. STURGE** - Pickford J.  
 30 T. L. R. 137

**Sale of Goods.**

— C.i.f. contract—Delivery—Non-insurance of the goods—Obligation of buyer to accept.  
*See SALE OF GOODS.*

— Omission of seller to give buyer notice of shipment to enable him to insure—Whether goods at seller's risk on voyage.  
*See SALE OF GOODS.*

**Seaworthiness:**

*Cargo damaged by leak caused by rotten condition of hull.*

**SASSOON & Co. v. WESTERN ASSURANCE Co.** - P. C. [1912] A. C. 561; 81 L. J. (P. C.) 231; 17 Com. Cas. 274; 12 Asp. Mar. Law Cas. 206; 106 L. T. 929

*Time policy—Total loss—Ship sent to sea with insufficient crew—Privity of managing owner—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 39 (5).*

The plts. sued the defts., claiming to recover upon a time policy on the steamship *Dunsley*, which was totally lost during the currency of the policy:—

*Held*, that the *Dunsley* was unseaworthy, when she was sent on the voyage in question, inasmuch as she was provided with an insufficient crew, and that as she was sent on the voyage in that condition with the privity of the plts.' managing owner, and the loss was attributable to such unseaworthiness, s. 39, sub-s. 5, of the Marine Insurance Act, 1906, relieved the defts. from liability for the loss.  
**M. THOMAS & SON SHIPPING Co., LD. v. THE LONDON AND PROVINCIAL MARINE AND GENERAL INSURANCE Co., LD.** - Pickford J. 29 T. L. R.

736

**War Risk.**

*See above, Loss.*

**INSURANCE (MORTGAGE)** — *Insurance of mortgage owned by a company—Condition that policy should cease if the interest of the insured in the mortgaged property should pass from the insured otherwise than by operation of law—Insured company in liquidation—Power of liquidator to assign.*

The exception in a prohibition of assignment or alienation of "by operation of law" extends to enable a person, such as a liquidator, to whom the property passes by operation of law with an obligation to realize it, to assign the property.

**Doe v. Bevan** (1815) 3 M. & S. 353, followed. *In re BIRKBECK PERMANENT BENEFIT BUILDING SOCIETY. OFFICIAL RECEIVER v. LICENSES INSURANCE CORPORATION*

Neville J. [1913] 2 Ch. 34; 82 L. J. Ch. 386; [1913] W. C. & Ins. R. 566; [1913] W. N. 151; 108 L. T. 664; 57 S. J. 559

*Re-insurance—Contract of indemnity—*

**INSURANCE (MORTGAGE)**—*continued.*

*Liquidation—Scheme of arrangement—Limit of liability of re-insurer.*

A contract by a co. with the holders of debentures issued by another co. to guarantee the payment of principal and interest, though it may be called a policy of insurance, is merely a contract of suretyship; and a contract to re-insure such a policy is merely a contract of indemnity. If therefore a co., which has in this way insured the payment of debentures, and re-insured a proportion of the risk, goes into liquidation and adopts a scheme under which the debenture-holders will receive less than 20s. in the pound, the re-insurers are only liable to pay to the original insuring co. the amount which it pays in the liquidation to the debenture-holders.

*In re LAW GUARANTEE TRUST AND ACCIDENT SOCIETY, LD. LIVERPOOL MORTGAGE INSURANCE Co.'S CASE* - Neville J. [1913] 2 Ch. 604; 109 L. T. 152

**INSURANCE (MOTOR-CAR)**—*Refusal to renew—Disclosure to agent—Absence of collusion—Validity of policy.*

The plt. insured a motor-car with an insurance co., but the co. refused to renew the insurance, and he mentioned this fact to an agent of the defts., another insurance co. The defts.' agent offered to propose him to the defts., and the plt., on receiving a proposal form with the question whether any co. had refused to renew his insurance, spoke about it to the defts.' agent, who replied that he would make it all right. The plt. did not fill in any answer to the question. The co. accepted the proposal and afterwards agreed that it should cover a new Vauxhall car. Subsequently the plt. insured a Siddeley car with the defts., and they had notice that the plt. had had a previous insurance, but the spaces for answers to the questions on the proposal form were left blank. Accidents occurred to both cars, and the defts. refused to pay on the ground that the plt. had originally represented that no insurance co. had refused to renew.

The plt. brought an action against the defts. for a declaration that the policies on the Vauxhall and Siddeley cars were valid. There was no evidence of any collusion between the plt. and the defts.' agent:—

*Held*, that as the plt. had made full disclosure to the defts.' agent, and as there was no evidence of collusion, the plt. was entitled to the declaration.  
**THORNTON-SMITH v. MOTOR UNION INSURANCE Co., LD.** - 30 T. L. R. 139

**INSURANCE (NATIONAL).**

*Insurance (National) Act, 1911, Regulations under. See W. N., 1913, pp. 2, 8, 78, 92, 93, 99, 100, 107, 109, 110, 117, 118, 123, 127, 128, 139, 143; 11 L. G. R. Orders 89, 91.*

*Approved Society, col. 287.*

*Contribution, Failure to Pay. See below, Employer, Liability of.*

*Employer, Liability of, col. 287.*

*Employment, col. 289.*

*Insurance Commissioners. See Employer, Liability of.*

**INSURANCE (NATIONAL)**—*continued.***Approved Society.**

*Sickness benefit—Rule that only a certificate of a panel doctor will be accepted—Ultra vires—Dispute between member of approved society and society—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), ss. 14, 67.*

A rule of an approved society under the National Insurance Act, 1911, provided that "an insured member shall send notice of illness to the secretary, in the form required by the court, as soon as possible after the commencement of the illness, whether he is entitled to claim benefit in respect of the illness or not, and shall not be entitled to sickness benefit, until he has sent to the secretary a declaration of incapacity for work in the form required, and a medical certificate or other sufficient evidence of incapacity and the cause thereof." Subsequently the society passed a resolution that "in every instance a certificate from a panel doctor must be sent."

The plt., a member of the society, was refused sickness benefit on the ground that he had sent in a certificate from the doctor who had in fact attended him in his illness, who was not a panel doctor, and had not sent in a certificate from a panel doctor. The plt. thereupon sued the society, claiming a declaration that the resolution was illegal and ultra vires:—

*Held*, reversing a decision of Bailhache J., that the resolution was illegal and ultra vires, and that, as the matter was not one of domestic administration which under s. 67 of the National Insurance Act, 1911, ought to go to arbitration, the plt. was entitled to the declaration sought.

HEARD v. PICKTHORNE - C. A. [1913] 3 K. B. 299; 82 L. J. (K. B.) 1264; 6 B. W. C. C. N. 53; 11 L. G. R. 621; 108 L. T. 818; 29 T. L. R. 497; 57 S. J. 532

**Contribution, Failure to Pay.**

See below, **Employer, Liability of.**

**Employer, Liability of.**

*Contribution—Jurisdiction of Court of Session—Insurance Commissioners—Question of rate of contribution payable by employer depending on daily earnings of employee—Employee earning 11s. 7d. per week of fifty-five hours, and working ten hours on ordinary days and five hours on Saturday—Question whether daily earnings should be ascertained by dividing weekly earnings by six or by taking sum earned in day of ten hours—Determination of question by Insurance Commissioners—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), ss. 4, 66, and Sched. II, Part I.*

*Held*, that under the statute the question fell to be determined by the Insurance Commissioners, and that the Court had no jurisdiction to reduce their determination. DON BROTHERS, BUIST & CO. v. SCOTTISH NATIONAL INSURANCE COMRS. - Ct. Sess. [1913] W. C. & Ins. R. 259

*Contribution, Failure to pay—Offence—Summary conviction—National Insurance (Joint Committee) Regulations, 1912—National Health In-*

**INSURANCE (NATIONAL) (Employer, Liability of)**—*continued.*

*surance (Collection of Contributions) Regulations, 1912—Validity—Certificate of urgency—Provisional regulations—Powers of Joint Committee and Insurance Commissioners—Rule-making authority—Government department—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), ss. 4, 7, 65, 69, 83—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 37—Rules Publication Act, 1893 (56 & 57 Vict. c. 66), ss. 1, 2, 4.*

By the National Health Insurance (Collection of Contributions) Regulations, 1912, made on May 22, 1912, the Joint Committee of the several bodies of Commissioners acting jointly with the Insurance Commissioners constituted under the National Insurance Act, 1911, certified under s. 2 of the Rules Publication Act, 1893, that on account of urgency the following regulations were to come into operation immediately, and in pursuance of the powers conferred on them by the National Insurance Act, 1911, and the National Insurance (Joint Committee) Regulations, 1912, they made the said regulations to come into operation forthwith as Provisional Regulations.

The National Insurance Act, 1911, came into force on July 15, 1912:—

*Held*, that, assuming the Joint Committee and the Insurance Commissioners were not a Government department, and consequently were not a rule-making authority as defined by the Rules Publication Act, 1893, and that they therefore had no power by certifying urgency to bring the regulations into operation on May 22, 1912, the regulations had been duly made under the powers conferred by ss. 7 and 65 of the National Insurance Act, and clause 5 (e) of the National Insurance (Joint Committee) Regulations, 1912, and were, as from the date when the Act came into force, valid and enforceable regulations.

Neither clause 5 (e) of the National Insurance (Joint Committee) Regulations, 1912, nor clause 6 (1) (a) of the National Health (Collection of Contributions) Regulations, 1912, is ultra vires.

The failure of an employer to pay a contribution in respect of an employed contributor is under s. 69, sub-s. 2, of the Act an offence punishable on summary conviction, and a conviction is not bad because it orders the deft. both to pay a fine and to pay to the Insurance Commissioners a sum equal to the amount of the contributions which the deft. has failed to pay.

It is no defence to a charge of failing to pay contributions under the Act that at the date of the failure to pay the benefits intended to be provided under the Act had not in fact been provided.

In each of seven successive weeks an employer failed to pay contributions in respect of the same employed contributor. After the expiration of the seven weeks he was prosecuted and convicted under s. 69, sub-s. 2, for a separate offence in respect of each failure to pay:—

*Held*, that the deft. had been guilty of seven separate offences. REX v. BAGGALLAY.

**INSURANCE (NATIONAL) (Employer, Liability of)**—*continued.*

HUBLOCK v. SHINN. REX v. HEDDERWICK.  
 MORRIS v. ASHTON - Div. Ct. [1913] 1 K. B.  
 290; 82 L. J. (K. B.) 391; [1913] W. C. & Ins.  
 R. 277; 6 B. W. C. C. N. 15; 11 L. G. R.  
 367; 23 Cox, C. C. 288; 108 L. T. 254;  
 [1912] W. N. 302; 77 J. P. 97

*Employed contributor—Termination of employment—Duty of employer to return insurance cards—Cards lost in post—Inability of insured person to get employment owing to loss of cards—Claim against employer for damages—Remoteness—Agency of Post Office to receive return of cards—National Insurance Regulations, May 22, 1912, Statutory Rules and Orders, 1912, No. 458.*

The plt. had been in the deft.'s employment as a scaffolder, and during the period of such employment he was insured under the National Insurance Act, 1911, his insurance cards being left in the custody of the deft. By the Regulations made under the Act the employer is required upon the termination of the employment to return any card in his possession to the contributor. Owing to the plt. being ill and having to go into hospital, his employment by the deft. terminated. Three weeks later the deft. posted the cards to the plt. at the address given on them. The cards were lost in the post. On leaving the hospital the plt. for two weeks failed to get employment in consequence of his inability to produce his cards.

On a claim for damages for the two weeks' loss of employment:—

*Held*, that the claim could not be maintained;

By Ridley and Pickford JJ., upon the ground that, assuming that the deft. had been guilty of a breach of his statutory duty to return the cards, the plt.'s failure to get employment was not the natural consequence of that breach;

By Avory J., upon the ground that the Post Office was the agent of the Insurance Commrs., whose property the cards were, to receive the return of the cards, and that the deft. having posted the cards had returned them to the contributor within the meaning of the Regulations. PRICE v. WEBB

Div. Ct. [1913] 2 K. B. 367; 82 L. J. (K. B.)  
 720; [1913] W. C. & Ins. R. 368; 6 B. W.  
 C. C. N. 47; 11 L. G. R. 602; 108 L. T.  
 1024; 29 T. L. R. 478; [1913] W. N. 138;  
 77 J. P. 333

— Non-payment of contributions by employer—  
 Proceedings before justices—Jurisdiction—“On summary conviction”—  
 Construction—Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), s. 42—  
 Fines Act (Ireland), 1851, Amendment Act, 1874 (37 & 38 Vict. c. 72), s. 5—  
 National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 69, sub-s. 2.  
*See IRISH LAW—Insurance.*

**Employment.**

*Contract of service—Church of England curates—National Insurance Act, 1911 (1 & 2*

**INSURANCE (NATIONAL) (Employment)**—*continued.*

*Geo. 5, c. 55), s. 1, sub-ss. 1, 3; s. 66, sub-s. 1 (iii.); First Schedule, Part I. (a).*

In order to make insurance obligatory under Part I. of the National Insurance Act, 1911, there must be something in the nature of a contract of service.

The position of a curate in the Church of England, whether he is formally licensed by the bishop under seal or is a mere probationer under the bishop's temporary permission, is that of a person who holds an ecclesiastical office, and not the position of a person whose duties and rights are defined by contract. Therefore the relation between the incumbent and the curate, or the bishop and the curate, is not the relation of employer and employed, and the curate is not compulsorily insurable under the Act.

*Quere* whether the curate, in either case, could come in under the Act as a voluntary contributor. *In re CHURCH OF ENGLAND CURATES. In re NATIONAL INSURANCE ACT, 1911* - - - - - Parker J. [1912] 2 Ch.  
 563; 28 T. L. R. 579; 82 L. J. (Ch.) 8; [1913]  
 W. C. & Ins. R. 34; 6 B. W. C. C. 3; 107  
 L. T. 643

*Contract of service—Employed contributors—Master tailors—Out-worker—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 1, sub-ss. 1, 2; Sched. I., Part I. cl. (c).*

This was an originating motion by the Insurance Commrs. under s. 66, sub-s. 1 (iii.), of the National Insurance Act, 1911, to determine whether the class of employment of master tailors was or was not employment within the meaning of Part I. of the Act.

The class of employment to which the motion refers is the class of employment in which a master tailor is engaged who makes up and finishes garments for a merchant tailor or wholesale clothing manufacturer, the work being done at the house or other premises of the master tailor and there being no relation of master and servant as between the merchant tailor or wholesale clothing manufacturer and the master tailor.

There was no obligation on the part of the master tailors to do any of the work themselves, and the greater portion of their time was occupied in supervising the work of the persons employed by them.

The Master Tailors' Organization, which was an approved society under the Act, having notified to the Commrs. a desire to argue that the master tailors were insured persons, was by direction of the Court served with the notice of motion and appeared at the hearing.

Warrington J. said that the case was one in which the relation of master and servant did not obtain, but for the purpose of the Act the relation employer and employed did obtain, because clause (c) of Part I. of the First Schedule of the Act provided that the person who gave out the articles or materials to be made up was to be deemed to be an employer, and that was sufficient to make the person to whom the articles were given the

**INSURANCE (NATIONAL) (Employment) — continued.**

employed. He thought, therefore, that the words of the clause, as they stood, did apply to these master tailors. The proper order to make was to declare that the employment of master tailors substantially on the terms and under the conditions mentioned in the statements submitted to the Court was an employment under Part I. of the First Schedule of the Act, and that the persons engaged in such employment were employed contributors within s. 1 of the Act, unless such persons were within any of the exceptions mentioned in Part II. of the same schedule, or were excluded by special order of the Commrs. *In re NATIONAL INSURANCE ACT, 1911. In re MASTER TAILORS — Warrington J. [1913] W. N. 270; 29 T. L. R. 725*

*Contract of service—Medical staff of infirmary—Master and servant—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 1, sub-ss. 1, 2, and Sched. I., Part I. (a).*

The National Insurance Act, 1911, enacts, Part I., s. 1, sub-ss. 1, 2, and Sched. I., Part I. (a), that persons employed within the meaning of the Act shall include all persons who are engaged in any "employment in the United Kingdom under any contract of service . . .":—

*Held*, that persons appointed to act in an infirmary (1.) as resident physicians and resident surgeons; (2.) as non-resident house physicians, non-resident house surgeons, and clinical assistants; and (3.) as supervisors of the administration of anaesthetics, were not persons employed within the meaning of the Act, in respect that, as the managers of the infirmary had no control over the manner in which these members of the staff carried out their treatment of the patients, no contract of service existed between them. *THE SCOTTISH INSURANCE COMMISSIONERS v. ROYAL INFIRMARY OF EDINBURGH — Ct. Sess. 1913 S. C. 751; [1913] W. C. & Ins. R. 383*

*Contract of service—National Education (Ireland)—Pupil teachers and monitors—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 1, sub-ss. 1, 3; s. 66, sub-s. 1 (iii.); Sched. I., Part I. (a).*

The employment of pupil teachers and monitors in National schools in Ireland is an employment within the meaning of the National Insurance Act, 1911, and the Commrs. of National Education are the employers. It is not a contract of apprenticeship, because an essential element of apprenticeship—the right to receive instruction—is absent from the contract; but is a contract of service within the meaning of Part I., s. 1, sub-s. 1, of the National Insurance Act, 1911. *In re NATIONAL INSURANCE ACT, 1911. In re PUPIL TEACHERS*

*Barton J. (Ir.) [1913] 1 I. R. 219; [1913] W. C. & Ins. R. 366*

*Contract of service—Nonconformist ministers—National Insurance Act, 1911, Sched. I., Part I. (a).*

Ministers of the United Methodist Church and ministers (under probation) of the Wesleyan Methodist Church, appointed by the Conference of their Church, are not employed

**INSURANCE (NATIONAL) (Employment) — continued.**

under a "contract of service." *In re UNITED METHODIST CHURCH MINISTERS — Joyce J. 6 B. W. C. C. N. 1; 107 L. T. 143; [1912] W. N. 206; 28 T. L. R. 539; 56 S. J. 687*

*Contract of service—Officers of poor law union—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 1, sub-ss. 1, 2; s. 66, sub-s. 1 (iii.); Sched. I., Part I. (a), Part II. (b).*

Officers of a poor law union are not employed under a contract of service within the meaning of Part I. of the First Schedule of the National Insurance Act, 1911. *In re NATIONAL INSURANCE ACT, 1911. In re SOUTH DUBLIN UNION OFFICERS — O'Connor M.R. (Ir.) [1913] 1 I. R. 244; [1913] W. C. & Ins. R. 245*

*"Employment otherwise than by way of manual labour"—Dairyman's foreman—Tailor's cutter—National Insurance Act, 1911, Sched. I., Part II. (g).*

In deciding whether a person is employed by way of manual labour the test to be applied is whether any manual labour that he may do in the course of his services is the really substantial work for which he is engaged or is only incidental or accessory to his employment.

The question arose with regard to a dairyman's foreman and a tailor's cutter:—

*Held*, both persons were employed otherwise than by way of manual labour. *In re DAIRYMAN'S FOREMEN AND In re TAILORS' CUTTERS*

*Swinfen Eady J. 6 B. W. C. C. N. 7; 107 L. T. 342; [1912] W. N. 229; 28 T. L. R. 587*

*"Employment otherwise than by way of manual labour"—Lithographic artist—Engraver—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), Sched. I., Part II. (g).*

*Held*, that the manual work done by lithographic artists and engravers engaged in the correction or improvement of half-tone engraved plates is not employment in manual labour. *In re LITHOGRAPHIC ARTISTS. In re ENGRAVERS*

*Warrington J. 6 B. W. C. C. N. 44; 108 L. T. 894; [1913] W. N. 126; 29 T. L. R. 440; 57 S. J. 557*

*Workman employing assistant—Contributions—Non-liability of head employers—National Insurance Act, 1911 (1 Geo. 5, c. 55), ss. 1, 4.*

Informations were laid against the respondents, who were the owners of silk mills, for non-payment of contributions under the National Insurance Act, 1911, in respect of two women, and it was proved that a number of block printers were employed by the respondents and that the two women were "tierers" who assisted the block printers. Each "tierer" was selected and engaged by the workman whom she was to assist, and the respondents had no voice in the selection. The wages of each "tierer" were paid by the workman who had engaged her, and she could be dismissed from her work by him. The justices found that the "tierers" were not under the general control and management of the respondents and therefore dismissed the summonses:—

**INSURANCE (NATIONAL) (Employment) —**  
*continued.*

*Held*, that the question was a question of fact for the justices. **NEWELL v. KING AND ANOTHER** — Div. Ct. 30 T. L. R. 34

**Insurance Commissioners.**

*See above, Employer, Liability of.*

**INSURANCE (PLATE GLASS) — Damage**  
"caused directly by or arising from civil commotion or rioting."—*Breaking windows.*

"An organized conspiracy to commit criminal acts, without more, does not amount to 'civil commotion.'"

By a policy of re-insurance, underwritten by the deft., the plts. were insured against "damage to plate glass caused directly by or arising from civil commotion or rioting." During the currency of the policy a large number of women in different parts of London simultaneously broke windows with hammers. Each woman, when arrested, went quietly to the police station; there was no disturbance in the street, and no public sympathy was shown for the women who broke the windows. No one of the women was charged with riot or unlawful assembly; the charge in each case was one of malicious injury, and each case was dealt with separately without any charge being preferred of acting in concert with others:—

*Held*, that there was no evidence that the damage was caused directly by or arose from civil commotion or rioting, and that the deft. was not liable on the policy.

*Held*, further, that the fact that the deft. had previously paid under another policy in the same words under similar circumstances did not estop him from raising the defence that the damage was not caused by civil commotion or rioting.

Decision of Bucknill J. affirmed. **LONDON AND MANCHESTER PLATE GLASS CO., LD. v. HEATH** C. A. [1913] 3 K. B. 411; 82 L. J. (K. B.) 1183; 108 L. T. 1009; 29 T. L. R. 103

**INTEREST**—Floating charge—*Pari passu* clause  
—Distribution of assets in debentureholder's action.

*See COMPANY—Debentures.*

— Income tax—Foreign investments—Insurance company—Interest not remitted home.

*See REVENUE—Income Tax.*

— Legacy—Contingent.

*See WILL—Legacy.*

— Rate of—Trustees, Liability of—Breach of trust—Mora—Contributory negligence.

*See SCOTTISH LAW—Trust.*

— Will — Construction — Legacy payable at twenty-one—Power to trustees to apply legacy in or towards maintenance of legatee—Additional funds provided for maintenance.

*See WILL.*

**INTERNATIONAL LAW**—Foreign legation —  
Subordinate officer — Diplomatic privilege —  
Waiver—Diplomatic Privileges Act, 1708 (7 Anne, c. 12).**INTERNATIONAL LAW—continued.**

On May 7, 1912, the liquidator of a co. issued a summons against the directors and auditors, charging various acts of misfeasance.

One director, R. E. Lembcke, was a secretary of the Peruvian Legation.

On May 15, 1912, he entered an unconditional appearance, and on Oct. 14, 1912, he issued a summons for further time to file evidence.

On Oct. 31, 1912, he swore an affidavit on the merits, stating his official position, but not raising any objection to the jurisdiction.

On June 10, 1913, the case was mentioned in Court on an application to fix a time for hearing, and R. E. Lembcke's counsel then stated that he should insist on his diplomatic privilege.

This objection was taken with the sanction and at the wish of the legation.

At the hearing of the summons the liquidator admitted that R. E. Lembcke was a person entitled to diplomatic privileges, but contended that he had waived it.

R. E. Lembcke contended that the summons was void under the Diplomatic Privileges Act, 1708, which was declaratory of the common law, and that it could not be set right by waiver.

Astbury J. said that both under the statute and at common law writs against foreign public ministers were absolutely null and void, though so far as *Taylor v. Best* (1854) 14 C. B. 487, was sound law, the privilege might be waived under very special circumstances. The question was whether those circumstances existed in the present case. Now waiver must be strictly proved. It implied a knowledge of the rights waived, and his Lordship was not satisfied that R. E. Lembcke, a foreign subject, when entering appearance and taking subsequent steps, had any such knowledge. There was also a considerable difficulty in holding that a subordinate secretary could waive his privilege without the sanction of his legation. Finally, it was clear that the summons must prove abortive against R. E. Lembcke, as no judgment or execution could be enforced or levied against him, and the authorities shewed the impropriety of allowing the action to go on merely for the purpose of defining his liability. The plea of privilege would therefore be allowed. *In re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LD.* — [1913] W. N. 329; 30 T. L. R. 78; 58 S. J. 173

**INTERPLEADER** — Interpleader summons —

Consent order for sale of goods—Title of trustee in bankruptcy to proceeds of sale.

*See BANKRUPTCY—Act of Bankruptcy.*

— Judgment for a debt—Goods of judgment debtor taken in execution and sold—Claim by assignee of the debt to proceeds of sale.

*See COUNTY COURT—Interpleader.*

**INTERPRETATION ACT, 1889.**

*See INSURANCE (NATIONAL).*

**INTERROGATORIES.**

*See DISCOVERY.*



**INTESTACY**—Gift of residue to forty-six named persons—Codicil—Revocation of gift to two of the number—Confirmation of will—No intestacy.  
*See WILL—Codicil.*

—Probate—Revocation—Supposed intestacy—Grant of letters of administration—Sale of real estate by administratrix—Subsequent discovery of will appointing executors—Invalidity of purchaser's title.  
*See PROBATE.*

—Realty—Devise—Life estate—Remainder to "my nearest male heir"—"My nearest and eldest male relative"—No male heir—Heiress-at-law.  
*See WILL—Devise.*

## **INTOXICATING LIQUORS.**

*See LICENSING ACTS.*

**INVESTMENT**—Trustee—Mortgage—Breach of trust—Insufficient security—"Two-thirds" limit—Duty of valuer.  
*See TRUSTEE.*

**INVESTMENTS**—Foreign investments—Income tax—Insurance company—Interest not remitted home.  
*See REVENUE—Income Tax.*

—Unauthorized—Difficulty of realization—Proposed appropriation in specie—Jurisdiction of Court.  
*See SETTLEMENT.*

**INVITATION**—Unfenced land.

*See NEGLIGENCE—Unfenced Land.*

## **IRISH LAW.**

*Bankruptcy, col. 296.*

*Bill of Sale. See BANKRUPTCY.*

*Charity, col. 296.*

*County Council. See LOCAL GOVERNMENT—County Council.*

*Drainage. See LOCAL GOVERNMENT—Drainage.*

*Evicted Tenants. See LAND PURCHASE ACTS.*

*Highway, col. 297.*

*Insurance, col. 298.*

*Irish Universities Act, 1908. See WILL—Legacy.*

*Justices, col. 299.*

*Labourers (Ireland) Acts, col. 299.*

*Land Purchase Acts, col. 300.*

*Licensed General Dealer, col. 306.*

*Local Government, col. 306.*

*Mistake. See MISTAKE.*

*Old Age Pensions. See LOCAL GOVERNMENT—County Council.*

*Patent. See PATENT—Licence.*

*Poor Law, col. 307.*

## **IRISH LAW—continued.**

*Practice, col. 307.*

*Rates, col. 308.*

*Registration of Title. See below, WILL.*

*Revenue. See REVENUE—Income Tax.*

*Settled Land. See below, Vendor and Purchaser.*

*Specific Performance. See below, Vendor and Purchaser.*

*Tenancy, col. 309.*

*Turbary Rights. See TURBARY RIGHTS.*

*Vendor and Purchaser, col. 309.*

*Way, Right of, col. 309.*

*Will, col. 309.*

## **Bankruptcy**

*Arrangement—Rejecting—Acceptance by statutory majority of creditors—Whether "reasonable and proper to be executed under the direction of the Court"—Irish Bankruptcy and Insolvent Act, 1857 (20 & 21 Vict. c. 60), s. 353.*

Where the proposal of an arranging debtor is accepted by the statutory majority of his creditors, it ought to be acted on by the Court having bankruptcy jurisdiction in the matter, unless there be some specific ground for rejecting it, e.g., that it is unreasonable, inasmuch as the creditors would get a substantially larger sum, if the estate were wound up in bankruptcy, or because the debtor has been guilty of some act of commercial dishonesty, such as contracting debts when he knows himself to be insolvent. *In re Pelan* (unreported) stated and followed; *In re O'Neill and Young* (reported sub nom. *In re A. and B., arranging debtors*) (46 Ir. L. T. R. 142) distinguished. *In re FRY* - - - C. A. [1913] 2 I. R. 273

—Reputed ownership—Bill of sale—Irish Bankruptcy and Insolvent Act, 1857.

*See BANKRUPTCY—Property Divisible among Creditors.*

## **Bill of Sale.**

*See BANKRUPTCY.*

## **Charity.**

*Charitable devise—Will executed within three months of death—Charitable Donations and Bequests (Ireland) Act, 1844 (7 & 8 Vict. c. 97), s. 16—Devise to parish priest—Gift to the office and not for personal benefit—Trust for heir-at-law and annuitant.*

By his will dated June 14, 1888, a testator, after devising a life estate to his wife in certain freehold property consisting of two houses in the village of O., provided as follows: "At my wife's demise I desire that the two houses become the property of the parish priest of U., on condition of paying 10*l.* yearly to my brother's son, P., and also 1*l.* yearly for masses for the repose of the souls of the deceased members of my family."

Testator died two days after the execution of the will. He was the owner in fee of the devised property. His widow died twenty-three years

**IRISH LAW (Charity)—continued.**

afterwards, on Feb. 22, 1911. At that date the priest of the parish of U. was the third in succession in charge of the parish since testator's death :—

*Held*, (1.) that the devise of the freehold house property to the parish priest of U. was a charitable devise, and, therefore, void as contravening the provisions of s. 16 of the Charitable Donations and Bequests Act, the testator having died within three months of the date of the will; (2.) that the parish priest of U. was a trustee for testator's nephew P. in respect of the annuity of 10*l.*, and for the heir-at-law of testator as to the rest of the property. *In re CORCORAN. CORCORAN v. O'KANE* - - - Barton J.

[1913] 1 I. R. 1

— Irish Universities Act, 1908—Charity—Will—Misdescription.

*See WILL—Misdescription.*

*Male religious order bound by monastic vows—“Regular clergy.”*

When trustees have a discretion to apportion between charitable objects and definite and ascertainable objects non-charitable, the trust does not fail, and in default of apportionment by the trustees the Court will divide the fund equally between the objects charitable and non-charitable.

A testator appointed his executor to distribute his estate of whatever nature “among the charities and hospitals (Roman Catholic) and the regular clergy—the friars of C. and W. to get the preference” :—

*Held*, that this was a gift to three objects—(a) charities generally, (b) hospitals, and (c) the regular clergy, and that, the executor having made no apportionment, the general estate should be divided equally between the three, the first and second being valid charitable legacies, and the third failing as being against the policy of the 10 Geo. 4, c. 7.

*Salisbury v. Denton* (1857) 3 K. & J. 529, applied.

*Semble*, the description “regular clergy” does not by itself necessarily import clergy bound by monastic vows. *In re GAVACAN. O'MEARA v. ATT.-GEN. O'Connor M.R.* (Ir.) [1913] 1 I. R. 276

*See CHARITY—Parish Priest.*

**County Council.**

*See LOCAL GOVERNMENT—County Council.*

**Drainage.**

*See LOCAL GOVERNMENT—Drainage.*

**Evicted Tenants.**

*See LAND PURCHASE ACTS.*

**Highway.**

*Repair—Locomotive—Traction engine—Excessive weight—Injury to highway—Nuisance—Special damage—Road authority—Right of, to sue—Practice—Appeal—Enlarging time—Mistake—Bona fide intention to appeal—Civil Bill Courts Procedure Act (Ir.), 1864 (27 & 28 Vict. c. 97)—R. S. C. (Ir.), Orders (1905) LVIII., r. 15; LXIV., r. 7.*

**IRISH LAW (Highway)—continued.**

The use of a traction engine which, by reason of its excessive weight, does substantial and abnormal damage to a public road, adequate for ordinary traffic, is a public nuisance, even though the engine be constructed in compliance with the provisions of the Locomotive Acts, 1861 and 1865.

In such a case the duty cast upon a county council to repair such damage, and the liability of a district council to provide the funds for such repair, amounts to special damage, so as to make the owner of the traction engine civilly liable at the suit of both bodies, suing jointly, for the cost of repairing the road.

*Semble*, such an action could be maintained by either body suing alone.

Where the unsuccessful party in a case stated under 27 & 28 Vict. c. 99 bona fide intended to appeal, to the knowledge of the opposite party, but fell into the mistake, shared by the opposite party, that the order was one from which an appeal could be taken within a year, and the position of the parties was unchanged, the C. A. extended the time for appealing under Order LXIV., r. 7. *CAVAN C. C. AND THE BAILIEBOROUGH R. D. C. v. KANE BROTHERS—C. A. (Ir.)* [1913] 2 I. R. 250

*Road materials taken by county surveyor—Right of owner to sue for value—Grand Jury Act, 1836 (6 & 7 Will. 4, c. 116), s. 162—Local Government (Adaptation of Irish Enactments) Order, 1899, Sched.*

The owner of lands cannot maintain an action to recover the value of stones or other materials taken out of the lands by a county surveyor or contractor for the repair of roads, &c., under the provisions of s. 162 of the Grand Jury Act, 1836, as adapted by the Local Government (Adaptation of Irish Enactments) Order, 1899. *BRITON v. TIPPERARY C. C.* Div. Ct. (Ir.) [1913] 2 I. R. 468

**Insurance.**

*See INSURANCE (LIVE STOCK) and (NATIONAL).*

*Justices—Jurisdiction—Summary conviction—Offence under National Insurance Act, 1911—Application of Petty Sessions (Ireland) Act, 1851—Statute—Construction—Incorporation, rejecting inconsistent provision—National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), s. 69, sub-s. 2—Fines Act (Ireland), 1851, Amendment Act, 1874 (37 & 38 Vict. c. 72), s. 5—Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), s. 42.*

Justices at petty sessions have jurisdiction to hear a complaint for an offence under s. 69, sub-s. 2, of the National Insurance Act, 1911, and the procedure prescribed by the Petty Sessions (Ireland) Act, 1851, applies to such offence.

The sub-s. above referred to enacts that an employer who has failed to pay a contribution which he is liable to pay under the Act shall be liable “on summary conviction” to a fine as therein mentioned. Sect. 5 of the Fines Act (Ireland), 1851, Amendment Act, 1874, provides that where by an Act then in force or thereafter

**IRISH LAW (Insurance)—continued.**

to be passed it is enacted that offences may be prosecuted in a summary manner, they may be prosecuted with respect to parts of Ireland other than the police district of Dublin metropolis, before a justice or justices of the peace at petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851. Sect. 42 of the last-mentioned Act declares that its provisions shall not be applicable to complaints under any of the Acts relating to the King's revenue of excise or customs, stamps, taxes, &c. :—

*Held*, that, even assuming the National Insurance Act of 1911 to be within the description of the Acts referred to in s. 42 of the Petty Sessions Act, the effect of s. 69 of the Act of 1911, taken in conjunction with s. 5 of the Act of 1874, was to incorporate with the Act of 1911 all the provisions of the Petty Sessions Act, except s. 42, in the same way as if there had been a provision that, notwithstanding s. 42 of the Petty Sessions Act, the procedure prescribed by that Act should apply to offences in Ireland within s. 39, sub-s. 2, of the National Insurance Act, 1911.

*Quare*, Is the National Insurance Act, 1911, within the class of Acts referred to in s. 42 of the Petty Sessions Act? **IRISH INSURANCE COMMISSIONERS v. HAMILTON - Div. Ct. (Ir.) [1913] 2 I. R. 453; [1913] W. C. & Ins. R. 473**

**Irish Universities Act, 1908.**

— Charities — Will — Construction — Legatee whether sufficiently described.

See **WILL—Legacy—Misdescription.**

**Justices.**

*Dangerous wall—Order to take down or repair—Right of appeal to quarter sessions—Effect of decision of justices as to ownership of wall—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 75—Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), ss. 39, 93—Petty Sessions (Ireland) Act, 1851 (13 & 14 Vict. c. 93), s. 24.*

An appeal to quarter sessions does not lie under s. 24 of the Petty Sessions (Ireland) Act, 1851, from an order of justices made under s. 75 of the Towns Improvement Clauses Act, 1847 (incorporated in the Towns Improvement (Ireland) Act, 1854), ordering the owner of a dangerous wall to take it down, rebuild, or repair it, even though the expense involved in doing the work may exceed 40s.

*Semble*, although the justices in making such order have jurisdiction to inquire who is the owner of the wall, in order to ascertain whether the proper notices have been given, that inquiry is one preliminary to the exercise of their jurisdiction, and their decision as to ownership is not conclusive in a subsequent proceeding to recover the expenses. **REX (AHERN) v. THE RECORDER OF CORK Div. Ct. (Ir.) [1913] 2 I. R. 35**

See **JUSTICES.**

**Labourers (Ireland) Acts.**

*Improvement scheme—Cottage—Order of county court—Judicial act—Undertaking not to*

**IRISH LAW (Labourers (Ireland) Acts)—contd.**

*let cottage to objectionable tenant—Illegality—Prohibition—Labourers (Ireland) Act, 1906 (6 Edw. 7, c. 37), s. 6, sub-s. 4 (c).*

An order of the county court under s. 6, sub-s. 4 (c), of the Labourers (Ireland) Act, 1906, confirming, amending, or disallowing an order of a Local Government Board inspector confirming an improvement scheme, is a judicial act, and is the subject of prohibition.

**R. (Eustace) v. Local Government Board (1910) 44 I. L. T. R. 176**, distinguished.

An order of a Local Government Board inspector, confirming an improvement scheme under the Labourers (Ireland) Acts, provided for the taking of a site on lands in the occupation of M. for a cottage to be built for R., on whose behalf a representation under the Acts had been made. M. presented a petition to the county court against this provision, on which an order was made confirming the order of the inspector, and proceeding: "The respondents" (the rural district council) "undertaking not to put into occupation of the cottage any labourer reasonably objectionable to the petitioner, and to consult the petitioner as to the selection of the tenant." The site was then acquired by the rural district council, and a cottage built upon it which was let to a tenant, not R. On an application by R. for a writ of prohibition to prohibit proceeding on the undertaking in the order of the county court:—

*Held*, that the undertaking was illegal, but that inasmuch as it did not order anything to be done, and also on the ground of lapse of time, a writ of prohibition ought not to be granted. **REX (RYAN) v. THE RECORDER OF CORK - C. A. (Ir.) [1913] 2 I. R. 241**

*Maintenance of fences on lands compulsorily acquired—Liability of district councils therefor—Incorporation of s. 15 of Railways (Ireland) Act, 1864 (27 & 28 Vict. c. 71), in Labourers Acts.*

A rural district council who take a plot of land under the provisions of the Labourers (Ireland) Acts, for the purpose of building thereon a labourer's cottage, and who erect thereon a properly constructed fence between the land so taken and the adjoining land of the owner from whom the plot was taken, are under no liability to the owner of such adjoining land to maintain such fence in an efficient state.

Sect. 15 of the Railways (Ireland) Act, 1864, which is incorporated in the Labourers (Ireland) Acts, by s. 16 of the Labourers (Ireland) Act, 1883 (46 & 47 Vict. c. 60), is applicable to ry. cos. taking land for the purposes of a railway, and does not apply to a district council taking land for the erection of labourers' cottages. **ELLIOTT v. STRABANE R. D. C. (No. 2) - Div. Ct. (Ir.) [1913] 2 I. R. 193**

**Land Purchase Acts.**

*Compulsory purchase—Evicted Tenants (Ireland) Act, 1907 (7 Edw. 7, c. 56), s. 2, sub-s. 4—Price—Estates Commissioners—Offer—Bonus.*

In estimating the amount to be offered under the Evicted Tenants (Ireland) Act,

**IRISH LAW (Land Purchase Acts)—continued.**

1907, for the compulsory acquisition of lands, the bonus which may possibly be payable in respect of the sale is not to be taken into consideration. *In re THOMAS ST. JOHN GRANT'S ESTATE - C.A. (Ir.)* [1913] 1 I. R. 414

*Fee-farm rent—Superior interest—Redemption—Purchase-money insufficient to provide for full redemption price—Right of owner of rent to sue on covenant for payment—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 16, sub-s. 1—Land Law (Ireland) Act, 1896 (59 & 60 Vict. c. 47), s. 31, sub-s. 1.*

Where before the making of a vesting order under s. 16 of the Irish Land Act, 1903, the lands thereby vested in the Land Commission are held under a fee-farm grant reserving a rent, which grant contains a covenant for its payment and constitutes a "superior interest," such rent, until redeemed by full payment of the redemption price fixed, is, as regards all persons other than the Land Commission and those claiming through it, to be deemed to continue as a rent, and the covenant continues to subsist as if the rent had not ceased against the land.

So held by Palles C.B. and Boyd J., Gibson J. dissenting.

A fee-farm grant made in the year 1866, granting certain lands to the grantee and his heirs at the yearly rent of 150*l.*, contained a covenant by the grantee for himself, his heirs, executors, administrators, and assigns, that the grantee, his heirs or assigns, would at all times during the estate thereby granted pay the said rent to the grantor, his heirs, or assigns, by half-yearly payments. The lands comprised in the grant subsequently became vested in B., and formed part of his demesne. An agreement was entered into between B. and the Irish Land Commission, under the provisions of s. 3 of the Irish Land Act, 1903, by which the Land Commission agreed to purchase the demesne from B. and resell it to him. An order of the Land Commission was made vesting the lands in the Land Commission, and on the same day a further order was made vesting them in B. in fee simple. By an order of the Estates Commrs. the sum of 2300*l.* was fixed as the selling value of the part of the demesne consisting of the lands comprised in the fee-farm grant. By a subsequent order of the Land Commission it was ordered that the rent of 150*l.* reserved by the grant, together with the value of the covenants therein, should be redeemed at the price of 3000*l.*, and by a further order of the Land Commission the sum of 2300*l.* was placed to the separate credit of the redemption price. The plt., who was the devisee of the grantor in the fee-farm grant, refused to accept this sum, and brought the present action against the personal representatives of the grantee, claiming as due under the covenant in the grant a half-year's rent which had accrued due subsequently to the date of the vesting order. The action was tried by Dodd J. without a jury, and he gave judgment for the defts. On a motion by the plt. to have this judgment set aside, and judgment entered for him:—

**IRISH LAW (Land Purchase Acts)—continued.**

*Held*, by Palles C.B. and Boyd J., Gibson J. dissenting, that the plt. was entitled to judgment for the amount claimed. *COLLES v. HORNSBY - Div. Ct. (Ir.)* [1913] 2 I. R. 210

*Improprate tithe rent-charge subject to a rent or annual sum—Redemption price of apportioned part of tithe, exceeding £30 and under £100—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 63, sub-s. 2—Application of—Costs.*

Where impropriate tithes, payable out of lands sold under the Land Purchase Acts and other lands, are subject to a rent, and the redemption price of the apportioned part of the tithes, payable out of the lands so sold, exceeds 30*l.*, but does not exceed 100*l.*, the vendor, notwithstanding the fact that he has notice of the existence of the rent, has a prima facie right to have such redemption price paid out to the person in possession or in receipt of the income of the tithes, pursuant to the provisions of s. 63, sub-s. 2, of the Irish Land Act, 1903, and to be freed from all costs incidental to the payment out thereof, except such costs as are properly payable in respect of the affidavit and undertaking required for such payment out. *In re ARMSTRONG'S ESTATE*

*Wylie J.* [1913] 1 I. R. 449

*Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 24, sub-s. 8—Insolvent estate—Sum for arrears of rent, to whom payable.*

Where upon the sale of a settled estate through the Irish Land Commission arrears of rent are due to the vendor (tenant for life) at the date of the purchase agreements, the sum payable in respect of those arrears under s. 24, sub-s. 8, of the Irish Land Act, 1903, is a sum earmarked and distinct from the rest of the purchase-money, and is payable to the vendor, notwithstanding that the rest of the purchase-money is insufficient to meet the claims of incumbrancers thereon. *In re O'FERRALL'S ESTATE - Ross J.* [1913] 1 I. R. 17

*Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 48, sub-s. 4—Insolvent estate—Absolute order for sale—Bonus—Mortgagee in possession during pendency of petition—Statutes of Limitation.*

Mortgagees having carriage of proceedings in the Land Judge's Court cannot enter into the possession of the lands for sale in the matter and on the dismissal of the petition set up such possession as giving them a title under the Statutes of Limitation against the mortgagor. During the pendency of the proceedings they hold as trustees for all persons interested in the lands.

Two absolute orders for the sale of B.'s insolvent estate were, in 1881, made by the land judge, on the petitions of the mortgagees and of the owner. The mortgagees' petition was abandoned, but not dismissed till 1912. In 1882 a Court receiver was appointed over the lands. In 1894 the Court receiver was discharged and a receiver appointed over the lands by the mortgagees having carriage of the sale. In 1898 the mortgagees appointed their receiver to be their agent and attorney, and went into possession of the lands as mort-

**IRISH LAW (Land Purchase Acts)—continued.**

gages in possession. In 1907 the owner's petition was dismissed, and the mortgagees proceeded to sell the lands to the tenants under the Irish Land Act, 1903, and sought to make title to the lands as absolute owners:—

*Held*, that time would not run in favour of the mortgagees until the date of the dismissal of the petition for sale, and that, the estate for sale being the insolvent estate of B., no bonus was payable. *In re THE ESTATE OF THE LIFE ASSOCIATION OF SCOTLAND* - **Ross J. [1913]**

1 I. R. 91

*Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 48, sub-s. 1—Estate for sale solvent as to the fee, but insolvent as to subsisting life estate—Bonus.*

An estate sold under the Land Purchase Acts was solvent as to the fee, but insolvent as to the life estate of the vendor:—

*Held*, that the estate was so incumbered that the vendor was not entitled to receive for his own use any part of the rents or profits thereof, within the meaning of the proviso to s. 48, sub-s. 1, of the Irish Land Act, 1903, and that the bonus should be added to the purchase-money, and not paid to the vendor. *In re NUNN'S ESTATE*

**Ross J. [1913]** 1 I. R. 411

*Irish Land Act, 1903—Purchase agreement—Death of vendor—Variation in terms of sale—Executors of vendor—Powers of executors—Conversion—Ademption—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 4.*

A. devised freehold lands to B., which were in the occupation of agricultural tenants. In 1905, A. entered into a joint agreement in form "G" with all her tenants, ten in number, for the sale to them under the provisions of the Irish Land Act, 1903, of the fee-simple of their holdings. A. died in 1907, without having altered her will. In 1909 the Estates Commrs. made an order declaring all the lands comprised in the agreement fit to be regarded as an estate, but subsequently refused to sanction the advance of the purchase-money in the case of one of the holdings.

On the hearing of a memorandum from the Estates Commrs., *held* by the C. A. (reversing the decision of Wylie J.), that the executors of the vendor had no power to vary the terms of the sale of the estate, and that as B., the devisee of the lands, refused to consent to the exclusion of the holding in respect of which the Estates Commrs. refused to advance the purchase-money, the entire sale fell through. *In re FINNEMOR'S ESTATE*

**C. A. (Ir.) [1913]** 1 I. R. 130

*Irish Land Act, 1909 (9 Edw. 7, c. 42), s. 15, sub-s. 1—Limitations on advances to tenant purchasers—Prior advance redeemed—Computation of, on application for subsequent advance.*

A tenant applying for an advance under the Land Purchase Acts, in pursuance of an agreement entered into after the passing of the Irish Land Act, 1909, can only obtain such a sum as, when added to any previous advances obtained by him, will be within the limits prescribed by s. 15, sub-s. 1, of the said Act, and it is immaterial whether the prior

**IRISH LAW (Land Purchase Acts)—continued.**

advances were made before or after the passing of the said Act. In computing the amount of advances for the purposes of s. 15, sub-s. 1, the original amount of a prior advance must be reckoned, whether entirely redeemed or not. *In re SWEETMAN'S ESTATE*

**Wylie J. [1913]** 1 I. R. 80

*Landlord and tenant—Devise of real estate by landlord—Purchase agreements subsequent to devise—Republication of will by codicil—Death of landlord—Subsequent sanction of advance—Conversion—Ademption—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 16.*

A testator, who was the absolute owner of real estates in Kildare and Dublin, by his will, executed in 1899, devised these estates to R. S. B. for life, with remainder to his first and other sons in tail male, with remainders over, and appointed J. T. S. his residuary legatee. On Jan. 1, 1906, the testator signed purchase-agreements with thirty-one of the thirty-six tenants occupying holdings on his Kildare estate for the sale to them of their holdings under the Irish Land Act, 1903, and on Jan. 31 swore an affidavit verifying an originating application to the Estates Commrs. to have his entire Kildare estate declared fit to be regarded as a separate estate. On Feb. 1, 1906, the testator signed purchase-agreements with the five tenants occupying holdings on his Dublin estate. On Feb. 7, 1906, the testator executed a codicil to his will, whereby he appointed a new executor, and expressly confirmed his will in other respects. The testator died on May 23, 1906, having in the interval between the execution of the codicil and his death signed further purchase-agreements with three of the five remaining tenants on his Kildare estate. The Estates Commrs. did not sanction the advance of the purchase-moneys for the two estates until after the death of the testator:—

*Held*, by the C. A. (affirming the decision of Barton J.), that the codicil effected a republication of the will, that the testator intended his interest in the lands devised to pass to R. B. S., and that the latter was entitled to a life estate in the purchase-moneys of the lands contracted to be sold by the testator in his lifetime, with remainders as provided by his will.

*Quare*, whether, having regard to the provisions of s. 16 of the Irish Land Act, 1903, the signing of agreements for sale of lands under that Act can operate as a conversion of lands devised by a will executed by the vendor prior to the date of the agreements, so as to adeem a specific devise.

*In re Sherlock's Estate [1899]* 2 I. R. 361, 591, and *In re Doyle's Estate [1907]* 1 I. R. 204, considered. *In re STEELE'S ESTATE. STEELE v. STEELE* - **C. A. (Ir.) [1913]** 1 I. R. 292

*Partition Acts, 1868 (31 & 32 Vict. c. 40), s. 3; 1876 (39 & 40 Vict. c. 17), s. 7—Jurisdiction of Chancery Division and county court—Tenant purchasers—Wasting order registered subject to equities—Annuity to Land Commission in existence—Tenancy in common in*

**IRISH LAW (Land Purchase Acts)—continued.**

*purchased holding—Judgment registered as mortgage against interest of one of several co-owners—Equity civil bill seeking sale in lieu of partition—Consent of Land Commission to partition, whether a condition to a decree for sale—Land Law (Ireland) Act, 1881 (41 & 45 Vict. c. 49), s. 30, sub-s. 1 (a)—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 54, sub-s. 1 (a).*

A judgment mortgagee of the share of one of several co-owners of a holding, purchased under the Land Purchase Acts subject to an existing annuity payable to the Land Commission, may obtain, under the Partition Acts, an order for sale of the whole without the consent of the Commission to a partition. *FARRELL v. DONNELLY* - - - C. A. (Ir.) [1913] 1 I. R. 50

*Sale by absolute owner—Death of, prior to vesting order—Claim to residue of purchase-money as between real and personal representatives—Conversion—Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33), s. 14, sub-s. 1—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 16, sub-s. 1, s. 24, sub-s. 1.*

Where an absolute owner of lands, who has entered into agreements for the sale thereof under the Land Purchase Acts, either to his tenants direct or to the Land Commission, dies prior to the vesting of the lands in the purchaser, the claim which attaches to the purchase-money under the order attaching claims, made pursuant to the provisions of s. 14, sub-s. 1, of the Land Law (Ireland) Act, 1887, and s. 24, sub-s. 1, of the Irish Land Act, 1903, or s. 16, sub-s. 1, of the Irish Land Act, 1903, as the case may be, is the claim of the personal representative of the vendor to payment of the residue of such purchase-money, and not the claim of his devisee, where he has devised the lands, or of his heir-at-law, where he dies intestate.

*Steele v. Steele* [1913] 1 I. R. 292, 299, considered. *In re CROKER'S ESTATE*

Wylie, J. [1913] 1 I. R. 522

*Superior interest—Demesne—Sale and re-purchase—Redemption of—Segregation of purchase-money of demesne—Irish Land Act, 1903 (3 Edw. 7, c. 37), ss. 3, 16.*

A., the owner of a demesne composed of parcels held under different titles, and free from incumbrances, agreed with the Land Commission for the sale and re-purchase of the demesne under the provisions of s. 3 of the Irish Land Act, 1903. Part of the demesne consisted of the lands of K., held under two leases for lives renewable for ever, the rents reserved by them being paid in one sum of 47l. 11s. 9d. The Estates Comms. apportioned the purchase-money of the demesne, which amounted to 17,895l., between the various parcels of the demesne, and fixed the sum of 498l. as representing the selling value of the lands of K.; B., the owner of the said rent of 47l. 11s. 9d., issuing out of the lands of K., was not represented before the Estates Comms. when the said sum of 498l. was fixed, and was, in fact, unaware of the sale of the demesne, until the sale was approaching completion. The said sum of

**IRISH LAW (Land Purchase Acts)—continued.**

17,895l. was sufficient for the redemption of all superior interests, leaving a large balance available for A. The redemption price of the rent of 47l. 11s. 9d. was fixed at 1140l. by Wylie J., who, however, held that there was no jurisdiction to pay to B. out of the purchase-money of the demesne any larger sum than the 498l. representing the selling value of the lands of K., out of which the rents issued:—

*Held*, by the C. A. (reversing the decision of Wylie J.), that under the circumstances of the case there was no occasion to apportion the purchase-money of the demesne, and that the redemption price of 1140l. was a charge on all the purchase-money of the demesne. *In re ATHLUMNEY'S (LORD) ESTATE*

C. A. (Ir.) [1913] 1 I. R. 402

**Licensed General Dealer.**

*Licensing Acts—New licence—Justices—Certificate—Licensing (Ireland) Act, 1833 (3 & 4 Will. 4, c. 68), s. 5—Licensing (Ireland) Act, 1902 (2 Edw. 7, c. 18), ss. 3, 5—Valuation.*

To satisfy s. 5 of the Licensing (Ireland) Act, 1902, on applications for new licences, a complete and effective valuation of the premises proposed to be licensed, and one which could be made the basis of rating, must be produced to the licensing session, and a valuation, though issued from the office of the Commr. of Valuation, which purports on its face to be provisional only, is not sufficient. *REX (HARRINGTON) v. ROSCOMMON JJ.*

C. A. (Ir.) [1913] 2 I. R. 32

*Principal and agent—General Dealers (Ireland) Act, 1903 (3 Edw. 7, c. 44)—Agent of a licensed general dealer purchasing old metals.*

Where a person, not being himself a licensed general dealer under the General Dealers (Ireland) Act, 1903 (3 Edw. 7, c. 44), purchases from an individual a quantity of lead less than 112 lbs., such purchase, if made by the purchaser as agent of a licensed general dealer, is not a contravention of the General Dealers (Ireland) Act, 1903. A licensed general dealer under that statute can deal by an agent or servant not only upon his licensed premises but also outside those premises, the dealer being responsible for the recording and accuracy of the entries required by the statute in respect of purchases so made by his agent or servant. *DUNNE v. LEE*

Div. Ct. (Ir.) [1913] 2 I. R. 205

**Local Government.**

— County council.

See LOCAL GOVERNMENT—County Council.

— Drainage.

See LOCAL GOVERNMENT—Drainage.

— Highways.

See also Highway.

*Urban district council—Appointment of town clerk—Right to prescribe qualifying examination—Commissioners Clauses Act, 1847*

**IRISH LAW (Local Government)—continued.**

10 & 11 Vict. c. 16), s. 65—*Towns Improvement (Ireland) Act, 1854* (17 & 18 Vict. c. 103), s. 30.

A resolution passed by an urban district council that a candidate to be elected by the council at a forthcoming election to fill the office, then vacant, of town clerk must have passed a qualifying examination is valid.

But a resolution the effect of which is to interfere with the discretion of the council at future elections in making future appointments is ultra vires. *REX (CASEY) v. TRALEE U. D. C.* Div. Ct. (Ir.) [1913] 1 I. R. 59

**Mistake.**

— Payment of poor rates without making deductions.

See **MISTAKE.**

**Old Age Pensions.**

See **LOCAL GOVERNMENT — County Council.**

**Patent.**

— Licence—Royalties — Agreement—Failure of consideration.

See **PATENT—Licence.**

**Poor Law.**

*Guardians' power to assume parental control—Condition precedent — Unfitness of parent—Habeas corpus—Poor Law (Ireland) Act, 1899* (62 & 63 Vict. c. 37), s. 1; *Poor Law (Ireland) Act, 1892* (55 Vict. c. 5), s. 2.

Where a board of guardians desire to exercise the powers of parental control over pauper children given to them by the Poor Law (Ireland) Act, 1899, s. 1 (ii.), a resolution to the effect that they are of opinion the parent of the child is unfit, by reason of the existence of some one or more of the conditions set out in sub-s. 1 (ii.) of that section, is a condition precedent to the exercise of such power; and accordingly where the guardians assumed parental control of children, purporting to act under such section, without having passed such resolution, the Court, upon the application of the parent, granted a writ of habeas corpus directed against the guardians to release such children.

A resolution, regular in form under the Poor Law (Ireland) Act, 1892, s. 2, ceases to be operative, if and when the parents or parent cease to be in receipt of indoor relief. *In re MCGLYNN* Div. Ct. (Ir.) [1913] 2 I. R. 37

**Practice.**

— Amendment—Writ.

See **AMENDMENT.**

*Civil bill appeal—Belfast Improvement Act, 1878* (41 & 42 Vict. c. clxxx.), s. 97—*Belfast Corporation Act, 1911* (1 & 2 Geo. 5, c. cxc.), s. 102—*County Court Amendment (Ireland) Act, 1882* (45 & 46 Vict. c. 29), s. 4.

An appeal does not lie to the judge of assize from an order of the Recorder of Belfast, made under s. 97 of the Belfast Improvement Act, 1878, as amended by s. 102 of the Belfast Corpo-

**IRISH LAW (Practice)—continued.**

ration Act, 1911, declaring that an order of the council of the county borough of Belfast requiring an adjoining owner to contribute towards the expense of completing a street is unjust and unfair. *DAVIDSON v. BELFAST COUNCIL* - Div. Ct. (Ir.) [1913] 2 I. R. 87

— Justices—Appeal.

See above, **Justices.**

**Rates.**

*Local government—Rating—Land used as a railway—Valuation list—Rate based on valuation—Finality of rate—Towns Improvement (Ireland) Act, 1854* (17 & 18 Vict. c. 103), ss. 60, 62—*Valuation Act, 1852* (15 & 16 Vict. c. 63), ss. 12, 27.

An urban council pursuant to s. 60 of the Towns Improvement (Ireland) Act, 1854, struck a rate on hereditaments and premises the property of a ry. co., based upon the final valuation list delivered by the Commr. of Valuation. Certain premises, alleged by the ry. co. to be "used as a railway," and as such liable to be assessed in the proportion of one fourth part only of their net annual value under s. 62 of the Act of 1854, were included in the said valuation list under the heading "buildings" and not under the heading "railways, fisheries, &c.," and were accordingly assessed by the urban council at their full value. No objection was made by the ry. co. to the valuation list prior to the striking of the rate, and no appeal was taken by them either against the valuation or the rate. The urban council having sued the ry. co. for the disputed rates:—

*Held* by the K. B. Div. (Palles C.B. and Kenny J., Wright J. dissenting) and by the C. A., that the plt. was entitled to recover the full rate.

*Held* by Palles C.B. and the C. A., that the description in the final list delivered by the Commr. of Valuation was conclusive that the hereditaments were not a "railway" or "lands used as a railway," and that the urban council were bound accordingly to rate them at their full value.

*Per* Kenny J.: A mistake in the description of the hereditaments could only have been corrected (1.) by an objection lodged with the Commr. of Valuation; (2.) by an appeal from the Commr.; or (3.) by an appeal from the rate. *WHALEY v. THE GREAT NORTHERN RY. CO.* - C. A. (Ir.) [1913] 2 I. R. 142

See **RATES.**

**Registration of Title.**

— Will of lands—Execution—Affidavit of attesting witness—Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), s. 34—Power to rectify the register.

See below, **Will.**

**Revenue.**

See **REVENUE—Income Tax.**

**Settled Land.**

See below, **Vendor and Purchaser.**

**IRISH LAW—continued.****Specific Performance.**

See below, **Vendor and Purchaser.**

**Tenancy.**

*Owner of undivided share—Jurisdiction to order sale in lieu of partition—Consent of landlord to a partition not a condition precedent to the institution of a suit for partition—Consent to a sale—Partition Acts, 1868 (31 & 32 Vict. c. 40), s. 3; 1876 (39 & 40 Vict. c. 17), s. 7—Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 5.*

In an equity suit by an owner of an undivided share in a holding held for a statutory term, brought against the owner of the other shares, seeking for a sale in lieu of partition, the Court has jurisdiction to order such sale, notwithstanding that the landlord has not given his consent to a partition. *PRENDERGAST v. MORGAN*

**Dodd J. [1913] 1 I. R. 321**

See **LANDLORD AND TENANT—Tenancy.**

**Turbary Rights.**

See **TURBARY RIGHTS.**

**Vendor and Purchaser.**

*Contract for the sale of settled land—Specific performance—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 45—Landed Estates Court Act, 1858 (21 & 22 Vict. c. 72), ss. 46, 47, 48.*

Sect. 46 of the Landed Estates Court Act, 1858, enables a limited owner to have his title investigated and a conveyance made by the Court, but does not confer on the Court jurisdiction to enforce specific performance of a contract for the sale of settled land. Sects. 47 and 48 deal with the case of an absolute owner of land, and have no application to that of a limited owner. *In re BROWNE'S ESTATE*

**Ross J. [1913] 1 I. R. 165**

**Way, Right of.**

*Holdings held under a common landlord—Erection of gate—Presumption of grant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71)—Prescription (Ireland) Act, 1858 (21 & 22 Vict. c. 42).*

The plt. and the deft. were tenants of holdings held under a common landlord. The deft. had acquired a right of way over the plt.'s holding. Across the end of this way, where it entered the county road, the plt. erected a gate for the convenient use of his holding. The deft. was allowed free ingress and egress through the gate:—

*Held*, no obstruction of the right of way.

The law as to the acquisition of a right of way as between tenants of a common landlord considered. *FLYNN v. HARTE*

**Dodd J. [1913] 2 I. R. 322**

**Will.**

*Erection—Attesting witness contradicting his previous evidence.*

Appeal by the deft. from the judgment of the Master of the Rolls [1913] 1 I. R. 31.

The C. A. on the facts unanimously reversed the judgment of the Master of the Rolls. Their Lordships gave no opinion on

**IRISH LAW (Will)—continued.**

the questions relating to the Local Registration of Title (Ireland) Act, 1891, which were argued. *GOODISSON v. GOODISSON*

**C. A. (Ir.) [1913] 1 I. R. 218**

**IRISH UNIVERSITIES ACT, 1908.**

See **WILL—Legacy—Misdescription.**

**JEOPARDY—** Company—Debentures—Meaning of jeopardy—Appointment of receiver.

See **COMPANY—Debentures.**

**JOINDER—** Action—Parties.

See **PARTIES.**

— Causes of action.

See **ACTION.**

— Larceny—Indictment—Joinder of several charges against different defendants. See **CRIMINAL LAW—Indictment.**

**JOINT TENANCY—Will—** Equitable assignment of a share of an estate—Severance of joint tenancy—Implication of.

If A. executes an equitable assignment of his reversionary interest under the will of B. and such reversionary interest is an interest as joint tenant with others expectant on the death of the then tenant for life, such assignment will operate by implication to create a severance of the joint tenancy, for it could not have been the intention of the parties thereto that the security should be void, if A. should predecease any of the other joint tenants in reversion. *In re SHARER. ABBOTT v. SHARER*

**Neville J. (1912) 57 S. J. 60**

**JOINT TENANT—** Insurance policy—Payment of premiums by one of two joint tenants. See **INSURANCE—Life.**

**JUDGMENT—** Foreign judgment.

See **FOREIGN JUDGMENT.**

— Interpleader—Judgment for a debt—Goods of judgment debtor taken in execution and sold—Claim by assignee of the debt to proceeds of sale.

See **COUNTY COURT—Interpleader.**

*Writ indorsed for liquidated demand—Reduction of amount by payment—Judgment in default of appearance—Judgment for amount in excess of sum actually due—Setting aside—Amendment—R. S. C., Order XIII., rr. 3, 10; Order XXVIII., r. 11; Order LXX., rr. 2, 3.*

Where a plt. signs judgment in default of appearance for a sum in excess of that which is due to him, the deft. is entitled to have that judgment set aside, subject to the right of the plt., in a proper case, to apply to have the amount of the judgment reduced. Delay on the part of the debtor will not necessarily deprive him of his right to have the judgment set aside.

*Hughes v. Justin* [1894] 1 Q. B. 667, followed.

*Armitage v. Parsons* [1908] 2 K. B. 410, distinguished. *Muir v. Jenks*

**C. A. [1913] 2 K. B. 412; 82 L. J. (K. B.) 703; 108 L. T. 747; [1913] W. N. 146; 57 S. J. 476**



**JUDGMENT CREDITOR**—Garnishee order absolute — Bankruptcy notice — "Execution stayed"—Secured creditor.  
See **BANKRUPTCY—Notice.**

**JUDGMENT DEBTOR**—Co-judgment debtors—Time given to one judgment debtor—Discharge of surety.  
See **PRINCIPAL AND SURETY.**

**JUDGMENTS**—*Debtor—Examination of defendant — Interim injunction — Alleged breach — R. S. C., 1883, Order XLII., rr. 32, 33.*

By r. 32 of Order XLII. of R. S. C., 1883, "When a judgment or order is for the recovery or payment of money . . . the Court or judge may make an order for the attendance and the examination of such debtor," and by r. 33, "In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a judge, and the Court or judge may make such order thereon for the attendance and examination of any party or otherwise as may be just." The plt. obtained against the deft. two judgments, which remained largely unsatisfied, and under an order made under Order XLII. the deft. was examined as to her means. On a subsequent application by the plt. for the appointment of a receiver of certain effects of the deft. an interim injunction was granted restraining the deft. from dealing with them. Subsequently a receiver was appointed, and he ascertained that certain articles had been removed from the deft.'s residence. It appeared that some of the articles had been removed while the interim injunction was in force, and that a picture had been sold, but the plt. could not ascertain what had become of the other articles :—

*Held*, that the plt. was entitled to a further order under r. 32 for the examination of the deft. as to whether she had any means of satisfying the judgments; and (Buckley L.J. dissenting) that the plt. was also entitled to an order under r. 33 for the examination of the deft. as to the execution and enforcement of the injunction and as to the deft.'s dealings with certain property subject to the injunction, inasmuch as the object of r. 33 was to make orders under r. 32 more efficacious. **STURGES v. COUNTESS OF WARWICK**  
**C. A. 30 T. L. R. 112**

See **BANKRUPTCY.**

#### **JUDICATURE ACT, 1873.**

See **APPEAL—Court of Appeal.**

**CHOSE IN ACTION.**

**COUNTY COURT—Interpleader.**

**DIVORCE—Hearing in Camera.**

**JUDICIAL SEPARATION**—Wife's petition for—Practice—Pleading—Answer by husband alleging adultery and claiming damages.

See **DIVORCE.**

**JURISDICTION**—Bankruptcy—Costs—Official receiver—Unsuccessful application by—Order to pay costs personally.

See **BANKRUPTCY—Costs.**

#### **JURISDICTION—continued.**

— Coal Mines (Minimum Wage) Act, 1912—Ambiguous award—Declaratory judgment as to meaning of—Jurisdiction of Court.  
See **MINES—Coal Mines.**

— Company—Winding-up.  
See **COMPANY—WINDING-UP.**

— County court.  
See **COUNTY COURT—Jurisdiction.**

— Criminal law—Libel—Imprisonment in default of finding sureties.  
See **CRIMINAL LAW—Sentence.**

— Disobedience of order of Court—Absence of personal service—Disobedient person going out of jurisdiction—Writ of sequestration.  
See **CONTEMPT OF COURT.**

— Divorce.  
See **DIVORCE—Domicil.**

— Ecclesiastical law—Criminal suit under Clergy Discipline Act, 1892—Appeal in matter of law.  
See **ECCELESIASTICAL LAW.**

— High Court—County court, Order of Master remitting action of contract to—Appeal—Absence of jurisdiction in High Court after remittal of action to county court.  
See **COUNTY COURT—Remitted Action.**

— Income tax—Foreign possessions—Jurisdiction to assess at place of residence.  
See **REVENUE.**

— Justices.  
See **JUSTICES—Jurisdiction.**

— Licensing Acts.  
See **LICENSING ACTS—Licence.**

— Lunacy.  
See **LUNACY.**

— Mortgage—Foreclosure proceedings—Licence by mortgagees to work peat—Jurisdiction of Court to sanction.  
See **MORTGAGE—Foreclosure.**

— Offence triable summarily or on indictment—Person accused before Court of summary jurisdiction—Objection to jurisdiction—Power and duty of justices.  
See **JUSTICES—Criminal Law—Jurisdiction.**

— Poor law—Maintenance—Summary Jurisdiction (Married Women) Act, 1895.  
See **JUSTICES—Husband and Wife.**

— Registration—Appeal—Signature of notice of appeal by registration agent.  
See **PARLIAMENT—Ownership Franchise.**

— Service out of the jurisdiction.  
See **SERVICE.**

— Ship—Damage to goods—Bill of lading—Arbitration clause.  
See **SHIPPING—Jurisdiction.**

**JURISDICTION**—*continued.*

— Summary—Fine—Default of sufficient distress—Imprisonment—Licensing (Consolidation) Act.

See **JUSTICES—Criminal Law.**

— Summary—Withdrawal of summons—Jurisdiction to hear fresh information under same section of same statute.

See **JUSTICES—Criminal Law.**

— Trade mark—Registration.

See **TRADE MARK—Registration.**

— Water rate—Alternative remedy—Court of summary jurisdiction—Court of competent jurisdiction—Period of limitation

See **LIMITATIONS, STATUTE OF—Special Periods of Limitation.**

— Workmen's compensation.

See **WORKMEN'S COMPENSATION.**

**JURY**—Disagreement of—Formal order refusing to enter judgment for defendants.

The jury at the trial of the action having disagreed, the Court, on the application of the defts., made a formal order refusing to enter judgment, so as to enable the defts., if they thought proper, to take the case to the C. A. **SKEATE v. SLATERS, LD.**

— **Lawrence J. 29 T. L. R. 289**

— Disagreement—Immaterial point.

See **INSURANCE (LIVE STOCK).**

— Disagreement of jury — Quarter sessions—Justices in two Courts—Trial in one Court—Jurisdiction of justices in the other Court to discharge jury.

See **QUARTER SESSIONS.**

— Special.

See **COSTS.**

*Trial—Right to trial by jury—Action in Admiralty Division against pilot—Transfer to King's Bench Division—R. S. C., Order XXXVI., rr. 5, 6.*

The plts., as the owners of a causeway abutting on the Thames, claimed to recover the amount of damage done to the causeway through, as they alleged, the negligent navigation of a steamship which at the time was compulsorily in charge of the deft. as a Trinity House pilot. The plts. brought an action in personam in the Admiralty Division against the deft., and they also brought an action in rem against the owners of the steamship. The deft. took out two summonses asking respectively that the action against him might be tried with a jury and might be transferred to the K. B. Div. The judge dismissed both summonses on the ground that there being an action in rem against the ship which would, according to the usual practice, be tried by a judge with assessors, it would not be convenient that the personal action should be tried before another tribunal. On appeal:—

**Held**, that the action should be tried in the K. B. Div. by a judge with a jury. **METROPOLITAN ASYLUMS BOARD v. SPARROW C. A. [1913] W. N. 115; 29 T. L. R. 450**

— Trial by, Right to—Justices.

See **JUSTICES—Criminal Law—Jurisdiction.**

**JURY**—*continued.*

— Verdict.

See **CRIMINAL LAW — Jury and DAMAGES.**

**JUSTICES.**

*Bias.* See below, **Disqualification.**

*Bona fide Claim of Right.* See below, **Jurisdiction.**

*Case Stated, col. 314.*

*Certiorari.* See below, **Disqualification. Criminal Law, col. 316.**

*Disqualification, col. 322.*

*Ejectment, col. 326.*

*Highway.* See **HIGHWAY.**

*Husband and Wife, col. 326.*

*Information.* See above, **Criminal Law.**

*Jurisdiction, col. 326.*

*Jury, Right to Trial by.* See above, **Criminal Law.**

*Licensing Acts.* See **LICENSING ACTS.**

*Limitation of Time, col. 327.*

*London.* See **LONDON.**

*Mistrial.* See above, **Criminal Law.**

*Petty Sessions.* See above, **Case Stated.**

*Poor Law, col. 328.*

*Quarter Sessions, col. 328.*

*Recognizances.* See above, **Criminal Law.**

*Summons.* See above, **Criminal Law.**

*Vagrancy Acts.* See above, **Criminal Law**

*Water, col. 329.*

**Bias.**

See below, **Disqualification.**

**Bona fide Claim of Right.**

See below, **Jurisdiction.**

**Case Stated.**

*Application for cinematograph licence — Power to state case—"Sitting in petty sessions"—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33—Cinematograph Act, 1909 (9 Edw. 7, c. 30), ss. 5, 6.*

On Jan. 5, 1910, the council of the county borough of Liverpool delegated to the justices for the city of Liverpool, sitting in petty sessions, all their powers under the Cinematograph Act, 1909, such delegation being in pursuance of s. 5 of the Act. Since such delegation the justices have administered the Act in Liverpool.

On April 24, 1913, the justices, acting under the said delegation, held a petty session for the purpose of hearing applications for licences under the Act, and an application for a cinematograph licence was then made by the appellant in respect of certain premises in Liverpool. The justices granted a licence to the appellant and made it subject to certain conditions. The appellant accepted the licence subject to those conditions, but contended that the conditions annexed to the licence were ultra

**JUSTICES (Case Stated)—continued.**

vires. The justices overruled that contention, whereupon the appellant applied to them to state a case. The justices thereupon stated a case, but submitted that they had no power or jurisdiction to do so, as they were not a Court of summary jurisdiction, and were not deciding any question in a judicial manner between parties:—

*Held*, that the justices in hearing the application were not sitting as a Court of summary jurisdiction, and therefore had no power to state a case. *Huish v. Liverpool J.J.* - Div. Ct. [1913] W. N. 289; [1914] 1 K. B. 109; 30 T. L. R. 25; 58 S. J. 83

*Non-service of notice of appeal and case on respondents—Service impossible—Jurisdiction to hear case—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.*

The respondents to an appeal against a decision of justices by way of case stated were nine seamen, of whom all but one were foreigners. The appellants' solicitor had made every effort to serve the respondents with notice in writing of the appeal together with a copy of the case as required by s. 2 of the Summary Jurisdiction Act, 1857, but had been unable to do so, as the whereabouts of the respondents could not be ascertained, except that they were either at sea or abroad:—

*Held*, that notwithstanding the want of service the Court in the circumstances had jurisdiction to hear the appeal.

*Anders n v. Reid* (1902) 66 J. P. 561, followed. *Foss v. Best* [1906] 2 K. B. 105, not followed. *Wills & Sons v. McSherry* - Div. Ct. [1913]

1 K. B. 20; 82 L. J. (K. B.) 71; 23 Cox, C. C. 254; 107 L. T. 848; 77 J. P. 65; 29 T. L. R. 48

*Shipping—Seamen's wages—Claim before Court of summary jurisdiction—Final order—Power of justices to state a case—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 164.*

By s. 164 of the Merchant Shipping Act, 1894, a seaman may as soon as any wages due to him, not exceeding 50L., become payable, sue for the same before a Court of summary jurisdiction in or near the place at which his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the Court in the matter shall be final.

Claims were made by the respondents, who were seamen, against the appellants, who were shipowners, upon a promise made by the captain of a ship belonging to the appellants for extra wages during the time the ship was detained at various ports between Port Said and Southampton. The claims were made before the justices of the county borough of Southampton sitting in petty sessions. The justices gave judgment in favour of the respondents.

At the request of the appellants the justices stated a special case.

On the special case coming on for argument, it was contended for the respondents that, as

**JUSTICES (Case Stated)—continued.**

the judgment of the justices was final, they had no power to state a case.

The Div. Ct. held, following *Westminster Corporation v. Gordon Hotels, Ltd.* [1908] A. C. 142, that there was no power to state a special case, and dismissed the appeal. *Wills & Sons v. McSherry and Others* - Div. Ct [1913] W. N. 375

**Certiorari.**

See below, **Disqualification.**

**Criminal-Law.**

*Brothel.* See **CRIMINAL LAW.**

*Fine*, col. 316.

*Information*, col. 317.

*Jurisdiction*, col. 317.

*Mistrial*, col. 320.

*Recognizance*, col. 321.

*Vagrancy*, col. 321.

**Brothel.**

See **CRIMINAL LAW.**

**Fine.**

*Summary jurisdiction—Fine—Default of sufficient distress—Imprisonment—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), ss. 66, 99—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 5.*

Sect. 65, sub-s. 2 (a), of the Licensing Act, 1910, provides that the penalty for an offence under the section shall be a fine not exceeding 50L. or imprisonment with or without hard labour for a term not exceeding one month. Sect. 99 provides that "Except as otherwise expressly provided, any offence under this Act may be prosecuted, and every fine or forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Acts."

The Summary Jurisdiction Act, 1879, s. 5, provides that the period of imprisonment imposed in respect of the default of a sufficient distress to satisfy a sum of money adjudged to be paid by a conviction shall, where the sum exceeds 20L., not exceed three months.

The deft. was convicted of an offence under s. 65 of the Act of 1910 and ordered to pay a fine of 25L., and in default of payment and of sufficient distress to be imprisoned for three months:—

*Held*, that although under s. 65 a sentence of imprisonment for the offence could not have exceeded one month, there was power under s. 5 of the Act of 1879 to impose a sentence of three months' imprisonment for non-payment of the fine and in default of sufficient distress.

*Reg. v. Hopkins* [1893] 1 Q. B. 621, followed. *REX v. LEACH. Ex parte FRITCHLEY* Div. Ct. [1913] 3 K. B. 40; 82 L. J. (K. B.) 897; [1913] W. N. 175; 109 L. T. 813; 92 T. L. R. 569; 77 J. P. 255

**JUSTICES (Criminal Law)—continued.***Information.*

*Intimidation—Assault—Personal offence—Information laid—Person attacked—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7.*

The respondent, a superintendent of police, laid an information against the appellants under the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), for that they, during a strike, on a certain date intimidated one A. by assembling in large numbers and throwing eggs at him when he was on his way to work, in order to compel him to abstain from work which he had a legal right to do.

The justices convicted the appellants, having found that they were all conniving at or aiding and abetting in the assault made upon A., although only two of them were actually found to have thrown eggs at him:—

*Held*, dismissing the appeal, (1.) that in a case like the present, at any rate, where there was a chance of a disturbance developing into a riot, it was not a matter of a mere personal grievance, and that there was a legal right for anyone to be able to institute a prosecution; and (2.) that on the evidence before the justices there was ample ground to convict of intimidation those of the appellants who had not been actually proved to have thrown the eggs. *YOUNG v. PECK* - Div. Ct. 23 Cox, C. C. 270; 107 L. T. 857; 77 J. P. 49; 29 T. L. R. 31

*Malicious damage to property of local authority—Information laid by officer and expressed to be on behalf of corporation—Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 22.*

*DUCHESNE v. FINCH AND OTHERS*

Div. Ct. 10 L. G. R. 559; 23 Cox, C. C. 170;  
107 L. T. 412; 76 J. P. 377;  
28 T. L. R. 440

*Jurisdiction.*

— Adulteration.

*See ADULTERATION—Warranty.*

*Bona fide claim of right—Obstruction to highway—Goods exposed for sale on street during fair—Evidence—Public market—Ouster of jurisdiction.*

On a prosecution by the M. District Council for obstruction to the public street of the town of M. there was evidence that the act complained of as an obstruction was the exposing for sale, during a public fair held in the streets of the town of M., of goods on the pavement; that the same class of goods had been sold at such fairs in the public street twenty years before; and that public fairs had been held in the streets of the town for twenty years and upwards. The prosecutrix, the deft. in the prosecution, claimed before the justices the right so to expose her goods, but was convicted and fined. Upon motion to make absolute a writ of certiorari to bring up and quash the conviction:—

*Held*, that on the evidence it might be inferred that the dedication of the street was

C.C.D.

**JUSTICES (Criminal Law)—continued.**

subject to the right to hold thereon public fairs at stated intervals, that there was evidence that the prosecutrix had the right to sell her goods as a member of the public at such public fair, and that there was, consequently, a bona fide claim of right on her part to do the acts complained of as an obstruction, which claim being material to their decision ousted the jurisdiction of the justices.

When there is a bona fide claim of right material to the decision, as the justices have no jurisdiction to determine the existence of the right, they have no jurisdiction to determine whether, in the case before them there has been an excessive user of the alleged right. *REX (KENNEDY) v. CORK J.J.*

Div. Ct. (Ir.) [1913] 2 I. R. 391

*Court consisting of stipendiary magistrate and another justice of the peace—Magistrates differing in opinion—Right of stipendiary to adjudicate alone—Acquiescence by second magistrate.*

Rule nisi to justices to shew cause why they should not state a case for the opinion of the Court.

The applicant for the rule, O'Hare, was summoned before a Court of summary jurisdiction sitting at the Porth Police Court, in the county of Glamorgan, under s. 32 of the Pawnbrokers Act, 1872, for unlawfully taking an article in pawn from a certain person appearing to be intoxicated.

The said Court of summary jurisdiction consisted of the stipendiary magistrate for the petty sessional division of Pontypridd, and another justice of the peace for the county of Glamorgan.

At the conclusion of the hearing the stipendiary magistrate ordered O'Hare to pay a fine of 10s. and the costs of the proceedings.

It appeared that the stipendiary magistrate and the other justice of the peace differed in opinion as to whether there should be a conviction, and that, in giving judgment, the stipendiary magistrate stated that, in giving his decision, he was not able to carry his colleague with him. O'Hare's solicitor thereupon urged that, as the justices were equally divided, O'Hare could not legally be convicted by one of them only, and that the proper course was either to dismiss the summons or to adjourn it, in order that it might be reheard before a Court differently constituted. The stipendiary magistrate refused to take either of those courses but convicted O'Hare and refused to state a case; whereupon O'Hare obtained this rule.

The stipendiary magistrate filed an affidavit in which he stated that, after the case had been fully heard, the justice who was sitting with him on the bench said in the course of a private discussion of the case that the evidence was not in his view such as to justify the conviction of O'Hare; that thereupon he (the stipendiary magistrate), being satisfied that the case was fully made out, stated his view to the other justice of the peace and added the following words: "I must then take upon myself the burden of adjudicating in this case

**JUSTICES (Criminal Law)—continued.**

alone," or "I shall have to adjudicate in this case alone," or other words to the like effect; that to this the other justice of the peace assented, saying, "Very well," or words to the like effect; that thereupon the stipendiary magistrate proceeded to pronounce his decision, adding that he alone was responsible for it, and that the other justice of the peace was not in any way a party thereto; that beyond the expression of his opinion privately to the stipendiary magistrate the other justice of the peace did not at any time give any decision in the case, or make any public statement or announcement from the bench with reference thereto.

The Div. Ct. discharged the rule, holding that what took place amounted to a withdrawal by the second justice of the peace from taking any part in the decision of the case. In those circumstances there was jurisdiction in the stipendiary magistrate to adjudicate on the case alone. *REX v. THOMAS AND ANOTHER. Ex parte O'HARE* - Div. Ct. [1913] W. N. 301; [1914] 1 K. B. 32

*Criminal libel—Civil proceedings in High Court pending—Interim injunction against publication—Information for criminal libel—Jurisdiction of magistrate to hear.*

L. laid an information against E. for criminal libel. It appeared that at that time civil proceedings were pending in the High Court against E. for similar libels, and that before the publication of the alleged criminal libel an interim injunction had been obtained against E. to restrain him from publishing similar libels, and E. had given an undertaking to that Court not to do so:—

*Held*, that on these facts there was no prima facie case for granting a rule for a prohibition to the magistrate before whom the charge of criminal libel was made. *Ex parte EDGAR* - Div. Ct. 77 J. P. 283; 29 T. L. R. 279

*Offence triable summarily or on indictment—Person accused before Court of summary jurisdiction—Objection to jurisdiction—Power and duty of justices—Statute—Construction—Enabling words—"May" equivalent to "must"—Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 7, 9.*

A person convicted of an offence under s. 7 of the Conspiracy and Protection of Property Act, 1875, by a Court of summary jurisdiction, or on indictment as thereafter in the Act mentioned, is liable to a penalty not exceeding 20*l.* or to imprisonment for a term not exceeding three months.

By s. 9 of the Act, where a person is accused before a Court of summary jurisdiction of an offence made punishable by the Act for which a penalty amounting to 20*l.*, or imprisonment, is imposed, the accused may, on appearing before the Court of summary jurisdiction, declare that he objects to being tried for such offence by a Court of summary jurisdiction, and thereupon the Court of summary jurisdiction may deal with the case in all respects as if the accused were charged with

**JUSTICES (Criminal Law)—continued.**

an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly:—

*Held* by Lord Coleridge and Bankes JJ. (Ridley J. dissenting), that the effect of s. 9 is that a person accused of an offence under s. 7 before a Court of summary jurisdiction, who, on appearing before that Court, declares that he objects to being tried by that Court, has a right to have the case dealt with as if he were charged with an indictable offence and not an offence punishable on summary conviction, and to have the offence prosecuted on indictment accordingly.

*Held*, therefore, that in the phrases "thereupon the Court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence" and "the offence may be prosecuted on indictment" the word "may" is an enabling word empowering the Court of summary jurisdiction to give effect to the right of the accused, which accordingly that Court is bound to do.

*Held*, consequently, that, upon a declaration of objection being duly made under s. 9, the Court of summary jurisdiction has no jurisdiction to try the case.

*Julius v. Lord Bishop of Oxford* (1880) 5 App. Cas. 214, followed. *REX v. MITCHELL (CLITHEROE JJ.) Ex parte LIVESLEY*

Div. Ct. [1913] 1 K. B. 561; 82 L. J. (K. B.) 153; 23 Cox, C. C. 273; 108 L. T. 76; 77 J. P. 148; 29 T. L. R. 157

— Recognizances.

See CRIMINAL LAW—Sentence.

**Mistrial.**

*Offence for which offender liable on summary conviction to imprisonment for term exceeding three months—Using house for purpose of betting with persons resorting thereto—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1—Omission to inform person charged of his right to be tried by jury—Withdrawal of summons—Jurisdiction to hear fresh information under same section of same statute—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17.*

Upon the hearing of a information preferred by the respondent against the appellant under s. 1 of the Betting Act, 1853, for using a house for the purpose of betting with persons resorting thereto, it was discovered, when the third of the respondent's witnesses was being examined, that the appellant had not, through inadvertence, been informed before the charge was proceeded with, as required by s. 17 of the Summary Jurisdiction Act, 1879, of his right to be tried by a jury, and thereupon the solicitor for the respondent withdrew the summons with the consent of the justices; although the solicitor for the appellant contended that there was no power to withdraw it.

A further information was subsequently preferred by the respondent under the same section (s. 1 of the Betting Act, 1853) against the appellant for using the house for the

**JUSTICES (Criminal Law)—continued.**

purpose of certain moneys being received by him as or for the consideration for assurances to pay or give certain sums of money on the happening of certain events or contingencies relating to certain horse races.

The evidence given on the hearing of both informations was substantially the same:—

*Held*, that the withdrawal of the first summons in consequence of the technical informality was not equivalent to a dismissal which could be pleaded in bar of the subsequent proceedings.

The dictum in *Pickavance v. Pickavance* [1901] P. 60, at p. 64, that the withdrawal of a summons by leave of the Court puts an end to the complaint upon which the summons is founded, does not apply where the withdrawal is owing to a technical informality in the proceedings on the hearing of the complaint.  
**DAVIS v. MORTON** - Div. Ct. [1913] 2 K. B. 479; 82 L. J. (K. B.) 665; 23 Cox. C. C. 359; 108 L. T. 677; [1913] W. N. 131

*Summary conviction—Rehearing—Unsworn evidence at first hearing—First conviction bad in law—Jurisdiction—Defendant not in legal peril—Autrefois convict.*

**REX v. MARSHAM. Ex parte PETHICK LAWRENCE** - Div. Ct. [1912] 2 K. B. 362; 81 L. J. (K. B.) 957; 23 Cox. C. C. 77; 107 L. T. 89; [1912] W. N. 130; 76 J. P. 284

**Recognizance.**

*Binding over to be of good behaviour—Jurisdiction to order a person to find sureties and to be bound over—No complaint on oath of any person put in fear of bodily harm—34 Edw. 3, c. 1.*

Justices of the peace have jurisdiction under the statute 34 Edw. 3, c. 1, upon proper evidence before them that a person is guilty of conduct calculated to incite others to commit offences in violation of the law and in disturbance of the peace, to require such person to find sureties for his good behaviour, and in default of finding such sureties to be imprisoned; and apart altogether from the construction of the statute by the course of authoritative decisions for so many years the Courts are now bound to hold that with proper materials before them justices have this power to bind a person over to be of good behaviour.

The justices have this power to bind over, although no complainant comes forward to testify on oath that he has been threatened, or that he is actually under fear of bodily harm from the person sought to be bound over.

*Haylock v. Sparke*, 1 E. & B. 471, followed.  
**LANSBURY v. RILEY**

Div. Ct. 109 L. T. 546; 77 J. P. 440;  
29 T. L. R. 733

**Vagrancy.**

*Poor law—Maintenance—Duty of husband to maintain children—Separation order by justices—Wife given custody of children—Order for payment of weekly sum to wife—Weekly sum not paid—Wilful refusal to maintain family—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 3—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 5.*

**JUSTICES (Criminal Law)—continued.**

By s. 3 of the Vagrancy Act, 1824, "Every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township or place . . . shall be deemed an idle and disorderly person within the true intent and meaning of this Act."

The respondent, a married man with four children under sixteen years of age, was able wholly to maintain his family by work. By an order of a Court of summary jurisdiction under s. 5 of the Summary Jurisdiction (Married Women) Act, 1895, it was ordered that his wife should be no longer bound to cohabit with him, that she should have the legal custody of the children, and that he should pay to his wife the weekly sum of 7s. 6d. The respondent did not pay any of the weekly sums, and shortly afterwards two of his children under sixteen became chargeable to the union. Upon an information under s. 3 of the Vagrancy Act, 1824, charging him with having wilfully neglected and refused to maintain his family by work, whereby his two children became chargeable, the justices held that, owing to the existence of the order giving the wife the custody of the children and ordering the respondent to pay her a weekly sum, they had no jurisdiction to convict the respondent:—

*Held*, that the existence of the order under s. 5 of the Act of 1895 did not affect the respondent's legal obligation to maintain his children, and that the order, being disobeyed, was no defence to the charge of wilfully neglecting and refusing to maintain his children. **SHAFTESBURY UNION (GUARDIANS OF) v. BROCKWAY**

Div. Ct. [1913] 1 K. B. 159; 82 L. J. (K. B.) 222; [1912] W. N. 313; 23 Cox. C. C. 818; 108 L. T. 336; 11 L. G. R. 176;  
77 J. P. 120; 29 T. L. R. 144

*See also CRIMINAL LAW—Sentence.*

**Disqualification.****Bias.**

*Conduct of interested justice calculated to lead public to think he was taking part in the adjudication.*

U. was prosecuted before the justices at petty sessions for having on his premises purloined yarns. The prosecution was brought by the direction of a linen trade association, and on the complaint of their inspector. When the case came on, U.'s solicitor objected to any magistrate taking part in the proceedings who was a member of the association. M., who was one of the justices, and was presiding as chairman, stated that he was a member of the association, but that he had no personal interest and would adjudicate. At the close of the statement of the complainant's case, and before any evidence was given, M. left the chair, and took his seat on the bench, some distance from the other magistrates. After a short time he left the bench and went into the magistrates' room, and was there when the other magistrates came in to consider their

**JUSTICES (Disqualification)—continued.**

decision, but at once retired. He took no part in the adjudication. U. was convicted of the offence charged :—

*Held*, that the conviction must be quashed with costs, to be paid by M. REX (UTRICHARD) v. ARMAGH J.J. Div. Ct. (Ir.) [1913] 2 I. R. 410

*Certiorari.*

*Acquittal—Justice of the peace—Statutory disqualification—Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 74 ; s. 103, sub-s. 2.*

Rule nisi for a certiorari to quash an order of justices dismissing an information preferred against two miners charging them with an offence under s. 74 of the Coal Mines Act, 1911.

Sect. 103, sub-s. 2, of the Coal Mines Act, 1911, provides that where proceedings are taken in a Court of summary jurisdiction in respect of an offence against the Act alleged to have been committed in or with reference to a mine, "a person who is the owner, agent or manager of any mine, or a person employed in a mine . . . or who is an officer of any association of persons so employed . . . shall not, except with the consent of both parties to the case, act as a member of the Court."

The rule nisi was moved for on the ground that, after the information had been dismissed, it was discovered that one of the justices who adjudicated on the case was a person employed in a mine and that another was president of an association, members of which were employed in mines, and it was contended that, these two justices being therefore disqualified by the Act from hearing the case, it had not been determined by a court of competent jurisdiction.

The Div. Ct. *held* that as the information had been dismissed, a writ of certiorari to quash the proceedings ought not to be granted. REX v. SIMPSON AND OTHERS

Div. Ct. [1913] W. N. 302 ; [1914] 1 K. B. 66 ; 30 T. L. R. 31 ; 58 S. J. 99

*Indictable offence—Bias—Prohibition—Right to give costs against Crown.*

C. was arrested on a warrant charged with an indictable offence, and brought before E., a justice of the peace for the county of the city of Belfast, who had been asked by the Crown solicitor to take the depositions. E. sat in a room in the police station, and on the request of the Crown solicitor made an order excluding all persons except representatives of the accused. Several other justices for the county of the city of Belfast endeavoured to enter the room, but were refused admission. C.'s solicitor applied to E. to admit the other magistrates, but E. refused to do so, giving as a reason that he was guided by the Crown, and directed by the Crown not to allow the other magistrates to be present. C. having applied for a writ of prohibition to prohibit E. from proceeding further in the matter on the ground of bias :—

*Held*, while entirely acquitting E. of any moral blame, that a reasonable public might think that the expression used by E. implied that in making his order he was acting by

**JUSTICES (Disqualification)—continued.**

the direction of the Crown and not exercising his own discretion, and that the writ of prohibition should be granted.

The case had been taken up by the Crown on behalf of E. :—

*Held*, that there was no power to give costs against the Crown. REX (COURTNEY) v. EMERSON - Div. Ct. (Ir.) [1913] 2 I. R. 377

*Interest in subject-matter of case in dispute—Conduct—Disqualification—Objection—Waiver.*

When a case is heard before a Court of summary jurisdiction the deft. or his solicitor must take objection to the presence on the bench of any justice who is alleged to have an interest in the subject-matter of the case, if he is aware of the existence of such interest, before the merits of the same are gone into. If the deft., or his solicitor, fails to take such objection and is afterwards convicted, he cannot then come to the Div. Ct. and obtain a writ of certiorari to quash the conviction on the ground that one of the justices had an interest in the matter which was before the Court of summary jurisdiction. REX v. BYLES AND OTHERS. *Ex parte* HOLLIDGE - Div. Ct.

23 Cox, C. C. 314 ; 108 L. T. 270 ; 77 J. P. 40

*Jurisdiction—Indictable offence—Judicial act—Prohibition—Warrant to arrest—Right of district inspector to whom warrant addressed to select justice to hear complaint—Prisoner produced at petty sessions—Justice who issued warrant refusing to act alone—Right of district inspector to select another justice—Order of discharge—Bias—Application of Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), to cases of surety for the peace.*

R. and S. were arrested on a charge of an indictable offence on warrants issued by N., a resident magistrate. The warrants were in the form given in the schedule to the Petty Sessions (Ireland) Act, 1851, and commanded M., the district inspector of the Royal Irish Constabulary, to whom they were addressed, to bring the prisoners before N. or some other justice. The prisoners when arrested were lodged in the police cells and brought next morning into the dock of the petty sessions Court, N. being on the bench together with D. and seven other magistrates. The names of the prisoners and the offences with which they were charged had been entered in the petty sessions order book, but without the authority of M. or the Crown solicitor, and when produced in the dock their names were called from this book by the clerk of the Court. Counsel for the Crown stated that he proposed to bring the prisoners before N. alone. N. ruled that the other justices sitting with him were also seised of the cases. Crown counsel then directed the prisoners to be removed by the police, and this was done. The magistrates present, with the exception of N. and D., were of opinion that the prisoners should be discharged, but no formal poll was taken, and by the direction of N. an order was entered in the order-book : "No appearance for the complainant." During the course of the proceedings D. referred to the bench

**JUSTICES (Disqualification)—continued.**

being packed. He said to the prisoners' counsel, "There are seven on your side." "You have seven magistrates to do as you like." The prisoners were subsequently brought by M. before D. alone, no formal notice of this being given to their solicitors. D. took the deposition of the constable who had arrested the prisoners, and then remanded them on bail. Neither their counsel nor solicitor was present. They applied for a writ of prohibition, prohibiting D. from further proceeding in the taking of depositions on the ground of bias and want of jurisdiction:—

*Held*, that the function of magistrates in returning for trial is judicial, and prohibition will lie, if bias or want of jurisdiction is established.

*Held*, by Palles C.B. and Gibson J., Boyd J. dissenting, that there had been no valid order of discharge, and that D. had jurisdiction.

*Held*, by Gibson and Boyd JJ., Palles C.B. dissenting, that R. and S. were properly before the Court of petty sessions, and were illegally removed, and that that Court would have had jurisdiction to make an order.

*Held*, by Palles C.B. and Gibson J., Boyd J. dissenting, that bias on the part of D. was not established.

*Quære*, is an application for sureties of the peace within the Petty Sessions Act?

*Rea (Bransfield) v. Cork Justices* [1912] 2 I. R. 151, considered. *REX (REA) v. DAVISON* Div. Ct. (Ir.) [1913] 2 I. R. 342

*Rule nisi—Sufficiency of affidavit—Practice—Bread Act, 1836* (6 & 7 Will. 4, c. 37), ss. 4, 15.

*Rule nisi* for a certiorari to remove into the High Court the record of the conviction herein-after mentioned.

James Phillips, the applicant, was convicted before the justices of Swansea of unlawfully selling bread otherwise than by weight, contrary to s. 4 of the Bread Act, 1836 (6 & 7 Will. 4, c. 37).

Sect. 15 of the Act provides that no person who shall be concerned in the business of a baker shall be capable of acting or shall be allowed to act as a justice of the peace under the Act.

The affidavit in support of the rule nisi stated that David Williams, one of the convicting justices, was president of the Swansea Co-operative Society and as such was concerned in the business of a baker, inasmuch as the society, amongst other businesses, carried on a baker's business. The affidavit did not state that at the time of the hearing before the justices the applicant was unaware of the facts alleged to disqualify David Williams from acting as a justice of the peace in the matter. No objection had been taken at that hearing to the competence of the Court.

The Div. Ct. *held* that, as the affidavit in support of the rule nisi omitted to state that the applicant was unaware at the hearing before the justices of the facts alleged to disqualify a member of the Court, the applicant could not claim a writ of certiorari ex debito

**JUSTICES (Disqualification)—continued.**

justitiæ; and in the exercise of their discretion they discharged the rule. *REX v. SWANSEA JJ. (WILLIAMS AND OTHERS). Ex parte PHILLIPS* - Div. Ct. [1913] W. N. 375

**Ejectment.**

*Summary jurisdiction—Ejectment—Small tenements—Summons by one joint owner—Summary Jurisdiction Act, 1851* (14 & 15 Vict. c. 92), s. 15.

Where a small tenement, which is within the terms of s. 15 of the Summary Jurisdiction Act, 1851, is owned by joint owners, a summons under the above-named section against the tenant to recover possession of the premises cannot be sustained, if it is in the name of one joint owner merely who sues as owner. *MILLS v. HOEY* - Div. Ct. (Ir.) [1913] 2 I. R. 381

**Highway.**

*See* HIGHWAY.

**Husband and Wife.**

*Desertion by husband—Order for weekly payments—Return to cohabitation—Arrears recoverable—Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), ss. 4, 5, 7, 8, 9—*Bastardy Laws Amendment Act, 1872* (35 & 36 Vict. c. 65), s. 4—*Summary Jurisdiction Act, 1879* (42 & 43 Vict. c. 49), s. 54—*Summary Jurisdiction Act, 1848* (11 & 12 Vict. c. 43), s. 11.

*MATTHEWS v. MATTHEWS* - Div. Ct. [1912] 3 K. B. 91; 81 L. J. (K. B.) 970; 23 Cox, C. C. 65; 107 L. T. 56; 76 J. P. 315; 28 T. L. R. 421

—Desertion—Practice—Appeal from justices—Second summons—Res judicata—Wife's costs.

*See* DIVORCE—Desertion.

**Information.**

*See* above, **Criminal Law**—Information.

**Jurisdiction.**

*Water—Waterworks—Breaking up streets—Laying water pipes therein—Subsequent subordination of street—Cost of repair—Compensation—Claim exceeding 50l.—Jurisdiction of justices—Waterworks Clauses Act, 1847* (10 & 11 Vict. c. 17), ss. 6, 28, 85.

By s. 6 of the Waterworks Clauses Act, 1847, where the undertakers are by the special Act empowered to take or use any lands or streams otherwise than by consent, they shall make to the owners and occupiers of and all other parties interested in any lands or streams injuriously affected by the construction or maintenance of the works authorized by the special Act, or otherwise by the execution of the powers thereby conferred, full compensation for all damage sustained by reason of the exercise as to such lands or streams of the powers vested in the undertakers by that Act or the special Act or any Act incorporated therewith, the amount of compensation being determined under the provisions of the Lands Clauses Consolidation Act, 1845, which provided (s. 22) that claims for compensation



**JUSTICES (Jurisdiction)—continued.**

not exceeding 50*l.* should be settled by justices and (s. 68) that claims exceeding that amount should be settled by arbitration or by a jury.

By s. 23 of the Waterworks Clauses Act, 1847, the undertakers may break up the soil of the several streets within the limits of the special Act and lay down pipes within the same, "doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers." By s. 85, with respect to the recovery of damages not specifically provided for, the clauses of the Railways Clauses Consolidation Act, 1845, relating thereto were incorporated with that and the special Act; and by s. 140 of the Railways Clauses Consolidation Act, 1845, such damages were to be determined by two justices.

Undertakers for the supply of water to a borough under a special Act, which incorporated the Lands Clauses Consolidation Act, 1845, and the Waterworks Clauses Act, 1847, under their statutory powers, broke up the soil of a public road, which was repairable by a county council, and laid a pipe therein, and they restored the road to its former condition. Eight months after the completion of the work a portion of the road slipped and was repaired at a cost exceeding 50*l.* Upon a claim preferred by the county council before two justices under s. 28 of the Waterworks Clauses Act, 1847, to recover the cost of repairing the damage the justices found (1.) that the whole of the work of laying the pipe had been done in a proper, efficient, and workmanlike manner; (2.) that the damage was the result of laying the pipe in the road:—

*Held*, that the claim for compensation fell within s. 6 of the Waterworks Clauses Act, 1847, and that, as it exceeded 50*l.*, the justices had no jurisdiction to entertain it; by Earl Loreburn and Lord Parker of Waddington, because s. 6 applied, whether the claim fell within s. 28 or not; by Lord Shaw of Dunfermline, because the findings of the justices did not bring the claim within s. 28.

Order of the C. A. [1912] 3 K. B. 493, affirmed. *HARPUR v. SWANSEA CORPORATION*. H. L. (E) [1913] A. C. 597; 82 L. J. (K. B.) 1208; 11 L. G. R. 1096; 109 L. T. 576; 77 J. P. 381; 57 S. J. 773

See above, Criminal Law, and Husband and Wife.

**Jury, Right to Trial by.**

See above, Criminal Law—Jurisdiction.

**Licensing Acts.**

See LICENSING ACTS.

**Limitation of Time.**

*Husband and wife—Persistent cruelty—Summons for desertion—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), ss. 4, 8—Time limit for laying information—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11.*

**JUSTICES (Limitation of Time)—continued.**

Persistent cruelty causing a wife to leave and live separately and apart from her husband is a different offence from that of desertion. Therefore it is necessary that any such complaint or information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose. *KAY v. KAY*

Div. Ct. 108 L. T. 813

**See LIMITATIONS, STATUTES OF—Special Periods of Limitation.****London.**

—General line of building—Erection in front of—Exemption.

See LONDON.

**Mistrial.**

See above, Criminal Law.

**Petty Sessions.**

See above, Case stated.

**Poor Law.**

See above, Criminal Law—Vagrancy, and Husband and Wife; and POOR LAW.

**Quarter Sessions.**

—Appeal to—Poor rate—Valuation list—Notice of objection to, after approval by assessment committee.

See RATES.

*Conviction by Court of summary jurisdiction—Notice of appeal to quarter sessions—Death of appellant before hearing—Jurisdiction of quarter sessions to order costs to be paid by executor of deceased appellant—Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), ss. 5, 6.*

When a person who has been convicted of an offence by a Court of summary jurisdiction has given notice of appeal to quarter sessions, but has died before the hearing of the appeal, and the appeal is dismissed in consequence, the quarter sessions have no power under ss. 5 and 6 of the Quarter Sessions Act, 1849, or otherwise, to make an order that the respondent's costs of the appeal should be paid by the personal representatives of the deceased appellant out of the estate of the deceased. *REX v. SPOKES. Ex parte BUCKLEY*—Div. Ct. 23 Cox, C. C. 140; 107 L. T. 290; 76 J. P. 354; 28 T. L. R. 420

*Costs—Licensing—Appeal against refusal to renew licence—Case stated by quarter sessions—Appeal allowed by High Court with costs against licensing justices—Power to order indemnity out of local funds—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 32.*

*REX v. JUSTICES OF THE SALFORD HUNDRED DIVISION OF THE COUNTY OF LANCASTER*

Div. Ct. [1912] 2 K. B. 567; 81 L. J. (K. B.) 952; 23 Cox, C. C. 110; 107 L. T. 174; 70 J. P. 395

—Creation of county borough—Adjustment of financial relations between county and county borough—Grant of Court of quarter sessions to borough.

See LOCAL GOVERNMENT.

**JUSTICES (Quarter Sessions)—continued.**

*Criminal law — Justices sitting in two Courts—Disagreement of jury at trial in one Court—Jurisdiction of justices in the other Court to discharge jury.*

Where at quarter sessions two Courts are constituted for the trial of prisoners, and at a trial in one Court the jury disagree, the jurisdiction to discharge the jury is not vested in the chairman of the Court of trial alone, but may lawfully be exercised by other justices.

*Quere*, if it is a necessary condition of a valid discharge of the jury at a criminal trial that the prisoner should be present, when the discharge is ordered. *REX v. RICHARDSON* - C. C. A.

[1913] 1 K. B. 395; 82 L. J. (K. B.) 333; 8 Cr. App. R. 159; 23 Cox, C. C. 332; 108 L. T. 384; [1913] W. N. 17; 77 J. P. 248; 29 T. L. R. 228; 57 S. J. 247

— Licensing Acts — Jurisdiction — Renewal of licence—Refusal by licensing justices—Appeal.  
*See LICENSING ACTS.*

*Poor rate—Non-payment—Issue of distress warrant—Levy—Appeal to quarter sessions by person “aggrieved”—Order of Court of summary jurisdiction—Procedure on appeal—Recognizance—Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 7—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, sub-s. 3—Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), ss. 6, 7.*

*REX v. JUSTICES FOR THE PARTS OF LINDSEY, LINCOLNSHIRE. Ex parte BOWER AND ANOTHER* - Div. Ct. [1912] 2 K. B. 413; 81 L. J. (K. B.) 967; 10 L. G. R. 703; 23 Cox, C. C. 102; 107 L. T. 170; 76 J. P. 311

**Recognizances.**

*See above, Criminal Law.*

**Summons.**

*See above, Criminal Law.*

**Vagrancy Acts.**

*See above, Criminal Law.*

**Water.**

— Rate—Alternative remedy—Period of limitation.  
*See LIMITATIONS, STATUTES OF — Special Periods of Limitation.*

— Works—Jurisdiction—Breaking up streets—Cost of repair.  
*See above, Jurisdiction.*

**JUSTIFICATION**—Discovery—Libel — Particulars of justification—Facts on which defendant relies in support of justification.  
*See PARTICULARS.*

**KNOWLEDGE**—Breaking and entering—Knowledge of owner of premises.  
*See CRIMINAL LAW — Breaking and Entering.*

**KNOWLEDGE—continued.**

— Gift of chattels—Void deed—Acknowledgment—Voluntary gift—Knowledge of donor—Delivery of deed by donor—Redelivery—Passing of property.  
*See GIFT.*

— Means of—Negligence.  
*See NEGLIGENCE.*

**LAND**—Native titles to land—New Zealand Settlement Act, 1863—Order in Council.  
*See NEW ZEALAND.*

— Settled.  
*See SETTLED LAND.*

**LAND CHARGES** — Infant — Maintenance — Necessaries—Reversion in fee in real estate — Loan — Charge — Security — Judgment.  
*See INFANT—Maintenance.*

**LAND TRANSFER** — Probate — Revocation—Supposed intestacy—Grant of letters of administration—Sale of real estate by administratrix — Subsequent discovery of will appointing executors—Invalidity of purchaser's title.  
*See PROBATE.*

**LAND TAX**—Redemption—Exoneration—Land abutting on highway—Presumption that soil of highway passes ad medium filum—*Land Tax Act, 1797 (38 Geo. 3, c. 5), ss. 4, 17, 18, 80—Land Tax Redemption Act, 1802 (42 Geo. 3, c. 116), ss. 8, 38.*

Where the land tax upon land adjoining a public highway has been redeemed, the presumption that the soil of the highway ad medium filum belongs to the owner of the adjoining land applies so as to extend the exoneration from tax to the middle of the highway.

A ry. was constructed, under statutory powers, in the city of London, partly beneath a highway adjoining lands in respect of which the land tax had been previously redeemed:—

*Held*, that the portion of the ry. under the moiety of the highway adjoining the exonerated lands was not liable to land tax.

Order of the C. A. [1911] 2 Ch. 467, affirmed. *CITY OF LONDON LAND TAX COMMRS. v. CENTRAL LONDON RY. CO.* - H. L. (E.) [1913] A. C. 364; 82 L. J. (Ch.) 274; 11 L. G. R. 693; 108 L. T. 690; 77 J. P. 289

**LAND VALUES**—Revenue.  
*See REVENUE—Increment Value.*

**LANDLORD AND TENANT.**

*Agreement, col. 331.*

*Agricultural Holdings, col. 331.*

*Covenant. See below, Lease.*

*Distress, col. 332.*

*Forfeiture, col. 332.*

*Landlord's Property Tax, col. 333.*

*Lease, col. 333.*

*Licensed Premises. See above, Lease.*

**LANDLORD AND TENANT—continued.***Negligence*, col. 339.*Rent*. See SET-OFF.*Tenancy*, col. 340.*Tithe Rent-Charge*, col. 341.*Waste*. See CHOSE IN ACTION.*Water*. See NEGLIGENCE.**Agreement.***Agreement to let premises for dancing—Restrictive covenant against use of premises for dancing—Collateral agreement.*

The plt., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that, as a basis of negotiations which culminated in an agreement in writing whereby the defts. agreed to let and the plt. agreed to take the premises in question, the defts. verbally warranted to let the premises for dancing purposes. The defts. had no power to let the premises for such purposes without the consent of the superior landlord, and such consent was never in fact obtained. The plt. took possession under the agreement and expended considerable sums in alterations, and now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—

*Held*, that the plt. had failed to establish the alleged parol agreement, and that, even if the evidence had established that before the contract was entered into the plt. had asked whether the premises could be let for dancing and had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract and could not control, vary, or add to the terms of the written contract. *CRAWFORD v. WHITE CITY RINK (NEWCASTLE-ON-TYNE), LD.* - - - *Eve J.*  
29 T. L. R. 318; 57 S. J. 357

**Agricultural Holdings.**

*Market garden—Notice to quit—"Good and sufficient cause"—"Reasons inconsistent with good estate management"—Demand of increased rent—Power of Court of Appeal to draw inferences of fact—Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 11 (a), (b).*

A notice to quit given by a landlord of an agricultural holding to his tenant with a view of obtaining an increased rent from a new tenant is a termination of the holding "with good and sufficient cause," and is not a termination of the holding "for reasons inconsistent with good estate management" within the meaning of s. 11 (a) of the Agricultural Holdings Act, 1908.

Observations of Lord Dunedin in *Brown v. Mitchell*, 1910 S. C. 369, approved.

*Quære*, whether the C. A. has power to draw inferences of fact in an appeal from the decision of a county court judge upon a case stated by an arbitrator under the Agricultural Holdings Act, 1908. *In re BONNETT AND FOWLER*. - C. A.  
[1913] 2 K. B. 537; 82 L. J. (K. B.) 713;

108 L. T. 497; 77 J. P. 281

**LANDLORD AND TENANT—continued.****Covenant.**See below, *Lease*.**Distress.**

*Ratification—Furniture—Bailiff—Sale—Landlord—Retention of proceeds.*

A landlord who, knowing that it is alleged that his bailiff has made an illegal distress, retains the proceeds of the sale of the things distrained, thereby ratifies the act of the bailiff, and if the distress was in fact wrongful is liable to the tenant for damages. *BECKER v. RIEBOLD AND OTHERS* - - - *Horridge J.*  
30 T. L. R. 142

**Wrongful seizure.**

Appeal from the Div. Ct. ((1912) 28 T. L. R. 413) allowed on the ground that there had been a seizure of the plt.'s cattle which had not been the subject of a distress. *CRESSWELL v. JEFFREYS AND ANOTHER* - - - C. A. 29 T. L. R. 90

**Forfeiture.**

*Breach of covenant—Notice of "particular breach"—Sufficiency of notice—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 1.*

An action was brought by the plt., who was the landlord of six houses, against the deft. F., who was the lessee of the premises in question, and the tenants in occupation of the premises, to recover possession of the demised premises on the ground of breach of covenant by the lessee.

On Mar. 21, 1912, the plt. served upon the deft. F. a notice with a schedule of dilapidations specifying the breaches of the repairing covenants complained of, in purported accordance with the provisions of the Conveyancing and Law of Property Act, 1881, s. 14, sub-s. 1.

The schedule of dilapidations attached to the notice was headed "Schedule of dilapidations allowed to accrue in and about the properties known as Nos. 35, 37, 39, 41, 43, and 45, Menotti Street, Bethnal Green," and dealt with the repairs alleged to be necessary under general headings, such as roofs, fronts and backs, rooms and staircases generally, without (except in two or three instances) referring specifically to the different houses. It concluded as follows: "Well and substantially repair, maintain, and put the premises and appurtenances in thoroughly good repair and condition, and note that the completion of the items mentioned in this schedule does not excuse the execution of other repairs if found necessary."

It was contended on behalf of the deft. that the notice was bad upon the grounds (1.) that it did not allege any particular breaches; (2.) that, if it contained particulars of breaches, it did not specify to which of the houses the respective breaches of covenant were to be referred; and (3.) by reason of the proviso that the completion of the items mentioned in the schedule should not excuse the execution of other necessary repairs:—

**LANDLORD AND TENANT (Forfeiture)—*contd.***

*Held* (Vaughan Williams L.J. dissenting), that the attention of the lessee was called to the particular condition of the premises which were alleged to be defective; that it was not necessary to point out all the defects in detail; that the discovery of these defects could be left to him; and that the notice given was consequently a sufficient compliance with s. 14, sub-s. 1, of the Conveyancing and Law of Property Act, 1881.

Decision of the Div. Ct., 109 L. T. 210, affirmed. **JOLLY v. BROWN AND OTHERS**

**C. A. 109 L. T. 532; 58 S. J. 153**

**Landlord's Property Tax.**

*Payment by tenant—Omission to deduct from next payment of rent—Right to deduct from future payments—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. (A), No. IV., r. 9—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 40.*

By a lease dated in 1907, certain premises were demised to a co., and the co. thereby covenanted to pay the rent and taxes in respect thereof, except land tax and landlord's property tax. The co. never paid any of the rent reserved, but made certain payments in respect of landlord's property tax. In 1911 a debenture-holders' action was commenced and a receiver was appointed. Subsequently the lessor threatened to distrain for the rent in arrear, and in order to avoid distress the receiver signed an undertaking by which he undertook to pay an occupation rent and also to pay the "arrears of rent" then owing out of a particular fund. The receiver paid one year's landlord's property tax, and subsequently made a payment of occupation rent without deducting anything for property tax:—

*Held*, that the joint effect of Sched. (A), No. IV., r. 9, of the Income Tax Act, 1842, and s. 40 of the Income Tax Act, 1853, was to treat the payment by a tenant of landlord's property tax as a pro tanto payment of rent.

*Held*, therefore, that the receiver was entitled to deduct the payments made by the co. and himself in respect of landlord's property tax from any future payments of rent to be made by him under his undertaking. *In re STURMEY MOTORS, LD. RATTRAY v. STURMEY MOTORS LD.*

**Warrington J. [1913] 1 Ch. 16; 82 L. J. (Ch.) 68; 107 L. T. 523**

**Lease.**

*Claim for Damages, col. 333.*

*Covenant, col. 333.*

*Implied Undertaking, col. 336.*

*Wall, col. 338.*

*Claim for Damages.*

— Action for rent—Set-off.

*See SET-OFF.*

**Covenant.**

*Covenant—Tied house—Supply of beer at the fair market price.*

Appeal from a decision of the C. A. (29 T. L. R. 145).

**LANDLORD AND TENANT (Lease)—*continued.***

The respondent was the tenant of a London public-house under a lease granted by the appellants, who were brewers. The lease contained a covenant by the respondent to deal exclusively with the appellants provided they should be willing to supply beer to him at the fair market price. The appellants sued the respondent for 293*l.*, being the balance of an account for beer sold and delivered to him. The respondent pleaded that the price charged for the beer was not the fair market price, and counterclaimed that, upon the true construction of the covenant, the appellants were not entitled to charge the respondent more than the ordinary market price charged to persons who were not tied. The action was tried before Lord Alverstone C.J. and a special jury. It appeared that the London brewers sold beer to tied houses and free houses alike at standard prices; that the ordinary discount allowed to tenants of tied houses was 5 per cent., but that in the case of London-brewed Burton the discount varied from 10 per cent. to 17½ per cent.; that any further discount was a matter of special bargain, and that free tenants frequently obtained discounts considerably in excess of the ordinary discount; that 93 per cent. of the public-houses in London were tied houses. The jury found that there were two market prices, one for tied houses and one for free houses, and that the respondent had been charged the fair market price, as applicable to a tied house.

Upon these findings the L. C. J. gave judgment for the appellants upon the claim and counter-claim. The respondent applied for a new trial.

The C. A. held that the judgment on the claim ought to stand, but granted a new trial as to the counter-claim.

The brewers appealed, and there was a cross-appeal by the tenant.

The H. L. allowed the appeal, and held that judgment should be entered for the appellants on both the claim and the counter-claim.

Viscount Haldane L.C. said that the covenant in the present case was directed to the circumstances of the London brewers' trade, and was to be construed in the light of those circumstances. What was the fair market price depended on what was meant by the market, and that must be ascertained by reference to the facts proved. The great bulk of the business was with tied tenants, who knew that the terms on which they got the right to be supplied with malt liquor were that they should take it exclusively from the owning brewer less certain discounts, the variation of which was to be limited by the prevailing practice. That was the meaning of the word "market" in this connection. **CHARRINGTON & Co. v. WOODER**

**H. L. (E.) [1913] W. N. 369; 58 S. J. 152**

*Covenant against assigning without consent of lessor—Consent not to be unreasonably withheld.*

The plt., who was the assignee of a lease which contained a covenant not to assign without the consent of the lessors, unless such consent should be unreasonably withheld, applied to the

**LANDLORD AND TENANT (Lease)—continued.**

lessors for leave to assign to certain persons. The lessors stated that they would not grant any licence to assign, whereupon the plt.'s solicitors wrote that in view of this attitude they would advise the issue of a writ forthwith. Before the writ was served, the lessors wrote again that they were taking up the proposed assignees' references. Subsequently the lessors wrote stating that having taken up the references they could not accept the proposed assignees. Thereupon the plt. executed an assignment of the premises, and in this action claimed a declaration that the lessors had unreasonably withheld their consent.

*Held*, that the lessor's consent had not been unreasonably withheld, and that the action failed. **SHANLY v. WARD** - C. A. 29 T. L. R. 714

*Covenant by lessee to pay "outgoings" — Covenant by lessor to keep the exterior of the premises in repair—Notice by sanitary authority to reconstruct outside drain—Liability of lessee.*

A lease of a dwelling-house contained a covenant by the lessee to "pay and discharge all rates, taxes, assessments, charges, and outgoings whatsoever which now are or during the said term shall be imposed or charged on the premises or the landlord or tenant in respect thereof (land tax and landlord's property tax only excepted)."

The lessor covenanted to "keep the exterior of the said dwelling-house and buildings in repair." The sanitary authority served notice during the term on the lessor under the Public Health Act, 1875, stating that a nuisance existed on the premises arising from an outside defective drain and requiring him to do certain work which involved the renewal and reconstruction of the drainage system outside the house; and an order of justices was made directing him to do the work. The lessor accordingly did the work required, and claimed to recover from the lessee the cost thereof so far as it exceeded mere repair:—

*Held*, that the lessee's covenant to pay "all outgoings imposed on the landlord in respect of the premises" must be read as being subject to the performance by the lessor of his covenant to keep the exterior of the buildings in repair, and that, as the work of renewal and reconstruction was necessary in order to enable the lessor to perform his covenant to repair, he was bound to bear the cost thereof.

**Stockdale v. Ascherberg** [1904] 1 K. B. 447, distinguished. **Howe v. Botwood** - Div. Ct. [1913] 2 K. B. 387; 82 L. J. (K. B.) 569; 108 L. T. 767; [1913] W. N. 118; 29 T. L. R. 437

*Covenant by lessor not to let "adjoining" premises for particular purpose.*

The defts. in a lease of premises to the plt. covenanted not to let the "adjoining" premises as a motor garage and office without giving the plt. the first refusal. The defts. having let premises which were near to, but not next door or physically adjoining, those let to the plt. as a lock-up show room for motor-cars without giving the plt. the first refusal, the plt. claimed an injunction.

*Held*, (1.) on the evidence, that the premises were not being used as a motor garage, and (2.) that the premises were not "adjoining" those let to

the plt., and therefore on both grounds the plt. were not entitled to an injunction.

**Cave v. Horsell** [1912] 3 K. B. 533, distinguished. **THE DERBY MOTOR CAB CO. v. CROMPTON AND EVANS UNION BANK** - **Eve J.** 29 T. L. R. 673; 57 S. J. 701

*Covenant not to underlet without consent—Consent not to be withheld in the case of a respectable and responsible person—Withholding consent—Underlease without consent.*

In Mar., 1911, the plt. by deed demised to the deft. a residential flat in Conduit Street, Hanover Square, for twenty-one years at the yearly rent of 100*l.*, and the deft. covenanted (inter alia) not to assign, underlet, or part with the possession of the demised premises without the consent of the plt. being first obtained, such consent "not to be withheld in the case of a respectable and responsible person."

On April 3, 1913, the deft. verbally informed the secretary of the plt. that he proposed to let the flat to one Higham for six months, if the plt. had no objection, that he would like to know by April 14, as Higham wanted possession on that date, and the secretary promised to bring the matter before the directors and to let him know. On April 14, the deft., not having heard from the secretary or the co., assumed that there was no objection and executed an underlease and let Higham into possession. On April 18 the plt. issued a writ against the deft. and Higham to recover possession of the premises on the ground that the deft. had underlet without their consent and had thereby forfeited his lease. Higham was admittedly a respectable and responsible person, and was subsequently dismissed from the action.

**Neville J.** held that it was a pure formality to apply for consent, where the lessor could not withhold it, when the proposed assignee was a respectable and responsible person. But the consent must be asked for, and, if the tenant applied for consent and within a reasonable time it was not granted, then that amounted to a withholding of consent. Here the consent was asked for, and under the circumstances the eleven days from April 3 to 14 was a reasonable time within which to ask for a reply. The plt. therefore had wrongly withheld their consent; there had been no breach of the covenant, and the action must be dismissed with costs. **LEWIS & ALLENBY** (1909), **LD. v. PEGGE** - **Neville J.** [1913] W. N. 357; 58 S. J. 155

—Severance of reversion.

See **LIMITATIONS, STATUTES OF—Real Property Limitation Acts.**

*Implied Undertaking.*

*House let for habitation—Defective premises—Undertaking to keep fit for human habitation—Accident arising from defect—Personal injury to daughter of tenant—Housing, Town Planning, &c. Act, 1909 (9 Edw. 7, c. 44), ss. 14, 15.*

By s. 14 of the Housing, Town Planning, &c. Act, 1909, in any contract made for letting for

**LANDLORD AND TENANT (Lease)—continued.**

habitation a house to which the Act applies there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation.

By s. 15, sub-s. 1, s. 14 shall, where applicable, take effect as if the condition implied in that section included an undertaking that the house shall during the holding be kept by the landlord in all respects reasonably fit for human habitation. By sub-ss. 3, 4, and 5, if it appears to the local authority that the implied undertaking is not complied with, the local authority may require the landlord to execute such works as they shall specify as necessary. The landlord may thereupon close the house for human habitation; otherwise the authority may do the necessary work and recover the expense from the landlord as therein provided. By sub-s. 6 the landlord may appeal to the Local Government Board. By sub-s. 9 any remedy given by the section for non-compliance with the undertaking implied by virtue of the section shall be in addition to and not in derogation of any other remedy available to the tenant against the landlord either at common law or otherwise;—

*Held*, that the effect of these enactments is to import into the contract of tenancy an implied undertaking by the landlord towards the tenant alone that the demised premises shall be during the holding in all respects reasonably fit for human habitation, and that a stranger to the contract of tenancy has no remedy for a breach of this implied undertaking.

*Cavalier v. Pope* [1906] A. C. 428, applied.  
**RYALL v. KIDWELL & SON** - Div. Ct.  
 [1913] 3 K. B. 123; 82 L. J. (K. B.)  
 877; 11 L. G. R. 655; 108 L. T. 922;  
 [1913] W. N. 163; 77 J. P. 345;  
 29 T. L. R. 499; 57 S. J. 518

*Premises let for less than three years—Rent under 40l. per annum—Defective staircase—Knowledge of landlord—Injury to tenant's wife—Landlord not liable—Housing, Town Planning, &c. Act, 1909 (9 Edw. 7, c. 44), ss. 14, 15.*

By ss. 14 and 15 of the Housing, Town Planning, &c. Act, 1909 (9 Edw. 7, c. 44), it is provided that in the case of certain houses mentioned in the first of these two sections there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation during the continuance of the holding.

The plts., husband and wife, resided in a house under a tenancy agreement which came within the Act. The tenancy was that of the husband, the wife being no party to the contract. Owing to the defective state of the staircase of the house, the wife of the tenant sustained injuries:—

*Held*, that in the absence of any contractual relationship between the wife of the tenant and the landlord, there was no liability on the part of the latter towards the former as to the condition of the premises.

*Cavalier v. Pope* [1906] A. C. 428, followed.  
**MIDDLETON AND WIFE v. HALL** - **Bankes J.**  
 108 L. T. 804; 11 L. G. B.  
 660, n.; 77 J. P. 172

**LANDLORD AND TENANT (Lease)—continued.***Wall.*

*Demise of first floor office—Right to fix flower boxes outside office windows—Trespass—Demise of both sides of outer wall.*

The demise of a floor or a room or an office bounded in part by an outside wall *prima facie* includes both sides of that wall, unless there be an exception or a reservation or something in the context to exclude it.

The plts. demised an office situate on the first floor of the plts.' leasehold premises to the defts., who covenanted (*inter alia*) to keep the inside parts of the office in good and substantial repair. The plts. covenanted to keep in repair the external parts of the demised premises and to permit the defts. to affix their trade signs, to be approved by the plts., on the outside of that portion of the building in their occupation, and, subject to this latter covenant, the defts. covenanted not without first obtaining the written consent of the plts. to attach or affix any sign, nameplate, or letters to the premises, and to remove all outside names and trade signs at the determination of the tenancy and to make good all damage caused to the outside walls of the building thereby. By the lease under which the plts. themselves held they were bound to repair and maintain the walls of the building.

The defts., without obtaining the consent or the plts., affixed flower boxes outside the three windows of their office. In an action by the plts. to restrain this alleged trespass:—

*Held*, that there was nothing in the defts.' lease to exclude the operation of the general rule; that the demise included the outside of the outer wall of the office; and that the plts. were not entitled to an injunction.

*Carlisle Café Co. v. Muse Brothers & Co.* (1897) 67 L. J. (Ch.) 53; 77 L. T. 515, followed.  
**HOPE BROTHERS, LD. v. COWAN** - **Joyce J.**  
 [1913] 2 Ch. 312; 82 L. J. (K. B.) 439;  
 108 L. T. 945; [1913] W. N. 159;  
 29 T. L. R. 520; 57 S. J. 559

*Demise of rooms—Right to outside wall.*

By an agreement in writing the deft. agreed to let and the plt. to take "all those rooms situate on the first and second floors of the business premises known as No. 41, High Street, Notting Hill Gate . . . together with the exclusive use of the side entrance door and staircase leading to the demised rooms" for one year certain (with option of continuance) at an annual rent.

The tenant agreed (*inter alia*) to repair "the interior of the demised rooms," to use "the premises" only for the profession of a dental surgeon, to permit the landlord at reasonable times to inspect the state of repair of "the premises" and execute structural repairs, and not to exhibit "upon the premises" any form of advertisement other than those relative to the profession of a dental surgeon.

The plt. entered into possession. By means of adhesive white letters and figures attached to the windows he advertised his practice, and he claimed to be entitled to use also the out-

**LANDLORD AND TENANT (Lease)—continued.**

side of the front wall for advertising his profession.

The deft. having, in derogation of his grant as the plt. alleged, authorized the affixing by third parties of boards upon the front wall with advertisements, and having refused at the request of the plt. to remove them, the plt. commenced this action for a mandatory injunction.

The deft. alleged an antecedent or contemporaneous verbal agreement between himself and the plt. that the deft. should have the right to let the outside walls of the rooms for advertisements, or (in the alternative) an express reservation of the right.

Eve J. held, following *Carlisle Café Co. v. Muse Brothers & Co.* (1897) 67 L. J. (Ch.) 53, that, apart from anything in the instrument of demise to the contrary, the demise of all the "rooms on the first and second floors" included the external walls of the two floors. There was nothing in the context to control that effect of the agreement; rather, the context supported it. That being the true construction of the agreement, evidence to contradict it was inadmissible. He had thought it right to hear the deft.'s evidence of a parol agreement or reservation, but it had fallen short of establishing either. Putting aside the evidence entirely, he held, on the true construction, that the plt. was entitled to an injunction. *GOLDFOOT v. WELCH*

Eve J. [1913] W. N. 357

**Licensed Premises.**

See above, Lease.

**Negligence.**

- Damages caused by malicious act of third party—Liability of landlord—Overflow from lavatory—Damage to defendant's goods from a cause which could not reasonably have been anticipated.

See NEGLIGENCE.

*Dangerous premises—Building let out in rooms—No undertaking to repair—Defective railings—Liability of landlord to persons other than tenants.*

The father of the plt., who was an infant, took from the defts. a room in a house. There was no undertaking by the defts. to keep the premises in repair. The railings attached to the area steps were dangerous owing to gaps, and the plt. was injured by falling down the steps:—

Held, in an action by the plt. against the defts. for personal injuries caused by their negligence, that on the authority of *Cavalier v. Pope* [1906] A. C. 428, and *Huggett v. Miers* [1908] 2 K. B. 278, the plt. could not recover. *DOBSON v. HORSLEY AND ANOTHER*

Ridley J. 30 T. L. R. 148

**Rent.**

- Mortgagee, Action by—Set-off.

See SET-OFF.

**LANDLORD AND TENANT—continued.****Tenancy.**

*Caretaker—Club premises—Legal estate in trustees—Secretary of club acting as their agent—Owner by estoppel—Summary procedure—Landlord and Tenant Act (Ireland), 1860 (23 & 24 Vict. c. 154), s. 86—Certiorari—Discretion of Court.*

A., the secretary of a club, put B., as caretaker, into possession of a cottage on grounds belonging to the club, the legal estate in which was vested in trustees for the club. B., having refused to give up possession to A. on demand after reasonable notice, A. obtained from the chief divisional magistrate (within whose jurisdiction the premises were) an order for possession under s. 86 of the 23 & 24 Vict. c. 154:—

Held by the K. B. Div., on application by B. for certiorari, and by the C. A. affirming their decision, that the order of the chief magistrate was right on the grounds that A. was owner by estoppel, and was also the known agent of the actual owners of the club premises.

Held, also, by the C. A., that B. having been put out of possession in the interval between the decision of the K. B. Div. and the hearing of the appeal, the Court, in the exercise of its judicial discretion, would refuse to grant certiorari. *REX (WALSH) v. SWIFTE*

C. A. (Ir.) [1913] 2 I. R. 113

- Holding over—Payment of five rent-charge—Limitations, Statute of.  
See LIMITATIONS, STATUTES OF.

*Surrender of tenancy—Tenant remaining in possession—Execution—Claim by landlord for rent—8 Anne, c. 14, ss. 6, 7—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 160.*

The deft., who was the tenant of a farmhouse and land, agreed with his landlord to give up possession thereof on Mar. 25, 1912. The deft. gave up possession of the land, but was permitted by the landlord to continue to occupy the house without paying rent until such time as the landlord should require him to give up possession of it. The deft. remained in the house and was occupying it on July 9, 1912, on which date certain goods in the house were taken in execution in satisfaction of a judgment recovered against the deft. in the county court. The landlord claimed under s. 160 of the County Courts Act, 1888, and ss. 6 and 7 of 8 Anne, c. 14, to be paid out of the proceeds of the execution rent which had become due on Mar. 25 under the tenancy of the farmhouse and land:—

Held, that the deft. had not continued in possession of the house after Mar. 25 under a new tenancy created by agreement and that the claim was good as against the execution creditor.

*Nuttall v. Staunton* (1825) 4 B. & C. 51, followed. *Wilkinson v. Peel* [1895] 1 Q. B. 516, distinguished. *LEWIS v. G. DAVIES, E. DAVIES, CLAIMANT* Div. Ct. [1913] 2 K. B. 37; 82 L. J. (K. B.) 631; 108 L. T. 606; [1913]

W. N. 86

**LANDLORD AND TENANT**—*continued.***Tithe Rent-Charge.**

See LIMITATIONS, STATUTES OF—  
Real Property Limitation Acts—  
Tenancy, and TITHE RENT-CHARGE.

**Waste.**

- Damages for—Unassignable.  
See CHOSE IN ACTION.

**Water.**

- Escape—Negligence—  
See NEGLIGENCE.

**LANDLORD'S PROPERTY TAX**—Mineral rights duty.

See REVENUE.

- Payment by tenant—Omission to deduct from next payment of rent—Right to deduct from future payments.

See LANDLORD AND TENANT—Land-  
lord's Property Tax.

**LANDOWNER**—Negligence—Unfenced land—

Leave and licence to enter—Children—  
Injury—Liability.  
See NEGLIGENCE.

**LANDS CLAUSES ACT**—Compulsory purchase—

Petition for payment out of purchase-  
moneys — Settled land — Necessity of  
tenant for life being a respondent —  
Costs of respondent tenant for life.  
See SETTLED LAND.

*Money lodged in court—Words in deed sufficient to pass—"Situate"—General words—Mortgage—Disentailing deed—Deed—Construction—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 69—Railways (Ireland) Act, 1851 (14 & 15 Vict. c. 70), s. 18.*

X. was tenant in tail in remainder, under an indenture of settlement made in 1870, of considerable estates in Galway and in other parts of Ireland. In 1890 a ry. co. acquired a small portion of the Galway lands under their compulsory powers, and the compensation money was lodged and remained in Court. In 1901, X. mortgaged his estates by several instruments in which they were variously described as "all my estates in Galway and wheresoever situate in Ireland," "all my estate situate in Galway and elsewhere in Ireland," and "all my lands, hereditaments, and premises in County Galway, Ireland, and other lands, hereditaments, and premises wheresoever situate in Ireland."

X. was adjudicated a bankrupt in England in 1902, and the estate tail in remainder given to him by the settlement having subsequently become an estate in possession, the official receiver and trustee of his estate duly executed a disentailing assurance of the lands comprised in and settled by the indenture of settlement of 1870, "and all other, if any, the tenements and hereditaments of or to which the said X. was seised or entitled as tenant in tail, whether at law or in equity, under the said indenture or

**LANDS CLAUSES ACT**—*continued.*

otherwise howsoever." Upon a summons by the Official Receiver in Bankruptcy for payment out of Court of the compensation moneys, which was opposed by the mortgagee:—

*Held*, (1.) that the compensation moneys were not included in the mortgage; (2.) that they were included in the disentailing assurance, and should be paid out to the Official Receiver in Bankruptcy. *Ex parte* THE BAL-LINROBE AND CLAREMORRIS LIGHT RY. CO. AND KENNY  
Barton J. [1913] 1 I. R. 519

**LARCENY.**

See CRIMINAL LAW—Larceny.

**LATENT AMBIGUITY.**

See WILL—Costs.

**LAVATORY**—Action for negligence—Proximate cause of damage—Malicious act of third person—Reasonable precautions—Overflow of water from lavatory in upper floor.

See NEGLIGENCE.

**LEASE**—Action by mortgagee for rent—Right of tenant to set-off damages claimed from lessor.

See SET-OFF.

- Landlord and tenant.

See LANDLORD AND TENANT—Lease.

- Licensed premises—Increase of duty—Lease—Sub-lease—Liability of lessor to pay proportion of increase.

See REVENUE.

- Mineral rights duty—Copyholder—Grant of right to let down surface—Lease of "right to work the minerals."

See REVENUE—Mineral Rights Duty.

- Mining lease.

See SETTLED LAND.

- Reversion duty.

See REVENUE—Reversion Duty.

- Settled estates—Power of leasing—Tenant for life—Statutory powers—Mining lease—Rents and profits—"Contrary intention."

See SETTLED LAND.

- Will—Lease by testator—Covenant by lessor—Specific devise of reversion—Liability for performance after lessor's death.

See ADMINISTRATION.

**LEASEHOLD HOUSE**—Specific bequest—Rent and outgoing to be paid out of general estate—Sale by life tenant—Ordinary application of proceeds.

See SETTLED LAND.

**LEAVE AND LICENCE**—Unfenced land.

See NEGLIGENCE—Unfenced Land.

**LEGACY**—Disclaimer.

See DISCLAIMER.

- Duty.

See ADMINISTRATION.

- Will—Construction.

See WILL—Legacy.



**LETTERS** — Trade mark — Initial letters —  
Registration — Distinctive mark — User.  
See **TRADE MARK** — Registration.

**LETTERS OF ADMINISTRATION.**  
See **PRQDATE**.

**LEVEL CROSSINGS** — Duty to sound whistle —  
Duty to warn persons — Canadian  
railways.  
See **CANADA** — Quebec.

**LEX FORI** — Water rate — Alternative remedy —  
Court of summary jurisdiction — Court  
of competent jurisdiction — Period of  
limitation.  
See **LIMITATIONS, STATUTES OF**.

**LIBEL.**  
See **DEFAMATION**.

— Sentence of imprisonment for maximum  
term — Recognizances to keep peace —  
Sureties — Imprisonment in default of  
finding sureties — Jurisdiction.  
See **CRIMINAL LAW** — Sentence.

**LICENCE** — Leave and.  
See **NEGLIGENCE** — Unfenced Land.

— Licensing Acts.  
See **LICENSING ACTS**.

— Mortgage — Foreclosure proceedings — Licence  
by mortgagees to work peat — Jurisdiction  
of Court to sanction.  
See **MORTGAGE** — Foreclosure.

— Penal servitude — Holder of licence — Indict-  
ment for another offence — Plea of guilty  
— Forfeiture of licence.  
See **CRIMINAL LAW** — Sentence.

*Suit in theatre — Contract — Forceful removal  
of visitor — Right to damages.*

If a visitor to a theatre has paid for his  
seat, he has a right to retain the seat so  
long as he behaves himself and keeps within  
the regulations laid down by the management.

*Wood v. Leadbitter, 13 M. & W. 888, distin-  
guished. HURST v. PICTURE THEATRES, LD.  
Channell J. 30 T. L. R. 98*

## LICENSING ACTS.

*Annual Licence Value. See*  
**REVENUE**.

*Club, col. 343.*

*Compensation. See below, Licence.*

*Disqualification. See below, Licence—  
Licensing Authority.*

*Licence, col. 344.*

*Offences, col. 348.*

*Revenue, col. 350.*

*Summary Jurisdiction. See JUSTICES.*

**Annual Licence Value.**

See **REVENUE**.

**Club.**

*Club requiring registration — Unregistered  
club — Club ordered to be struck off register — Re-  
registration of same club — Licensing (Consolida-*

## LICENSING ACTS (Club)—continued.

*tion) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24),  
ss. 91—95, 110.*

*LEES v. LOVIE - Div. Ct. [1912] 2 K. B. 425;  
81 L. J. (K. B.) 978; 23 Cox. C. C. 92;  
107 L. T. 165; [1912] W. N. 101;  
76 J. P. 372; 28 T. L. R. 441*

**Compensation.**

See below, **Licence**.

**Disqualification.**

See below, **Licence** — **Licensing Authority**.

**Licence.**

*Compensation Authority, col. 344.*

*Duty. See REVENUE.*

*Grant, col. 346.*

*Licensing Authority, col. 347.*

*Renewal, col. 347.*

*Compensation Authority.*

*Appeal—Determination by Commissioners of  
Inland Revenue—Licensing (Consolidation) Act,  
1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 20, sub-s. 2  
— Finance Act, 1894 (57 & 58 Vict. c. 30), s. 10.*

Where the renewal of an old on-licence is  
refused by the compensation authority, and,  
in default of approval by the compensation authority  
of the amount of compensation agreed upon by  
the persons interested in the licensed premises,  
the amount is determined under s. 20, sub-s. 2, of  
the Licensing (Consolidation) Act, 1910, by the  
Inland Revenue Commrs., the compensation  
authority have no right of appeal against the  
decision of the Inland Revenue Commrs.  
**LIVERPOOL COMPENSATION AUTHORITY v.**  
**INLAND REVENUE COMMRS.**

*Horridge J. [1913] 1 K. B. 165; 82 L. J. (K. B.)  
349; 108 L. T. 68; [1913] W. N. 6;  
29 T. L. R. 196*

*Claim by lessees—Proviso in lease that lease  
should determine if renewal were refused—Claim  
of lessees to compensation—Certiorari—Man-  
damus.*

The renewal of the licence of a public-  
house was refused in June, 1911, subject to  
compensation, and the lessees of the premises,  
who were brewers, claimed to be entitled to  
a share in the compensation money. Their  
lease was for fourteen years from Michaelmas,  
1904, and it contained (amongst others) a pro-  
viso that if the renewal of the licence was  
refused, the lease should cease and determine  
on Sept. 29 next after such refusal, and the  
lease therefore came to an end on Sept. 29,  
1911, seven years before its ordinary expira-  
tion. It having been determined by the High  
Court that the lessees were entitled to be  
treated as persons interested in the premises,  
the compensation authority, in dividing the  
agreed compensation money of 670*l.*, gave 570*l.*  
to the owner, 90*l.* to the licensee, and 10*l.* to  
the lessees. The lessees having complained  
that they had not been awarded any compensa-  
tion in respect of the seven years after  
Michaelmas, 1911, which alone they claimed,  
obtained rules for certiorari and mandamus:—

**LICENSING ACTS (Licence)—continued.**

*Held*, as to the certiorari, that as the order made by the compensation authority was good on the face of it, there was no ground for granting the writ; and as to the mandamus, that whether they were right or wrong in their decision upon the question of law arising on the construction of the proviso in the lease or upon the facts, the Court could not interfere by mandamus, as at the utmost it would be an erroneous decision on matters within their jurisdiction. *REX v. CHESHIRE JJ. Ex parte HEAVER* - Div. Ct. 108 L. T. 374; 77 J. P. 33

*Compensation money—Apportionment by compensation authority among persons interested—Alleged erroneous apportionment—Mandamus.*

Where a compensation authority has heard and determined an application for the apportionment of compensation money among the various parties interested, mandamus will only lie, if the compensation authority have considered matters outside the ambit of their jurisdiction.

Decision of the Div. Ct. (1913) 108 L. T. 797, affirmed.

*REX v. MONMOUTHSHIRE JJ.—Ex parte NEVILLE AND ANOTHER* - C. A. 30 T. L. R. 26

*Costs—Application for renewal of licence—Reference of application to compensation authority—Refusal of renewal subject to compensation—Probability of bias of member of compensation authority—Application for mandamus to hear and determine application—Costs incurred by authority in opposing application—Payment out of compensation fund—Whether ultra vires—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21, sub-s. 5.*

By s. 21, sub-s. 5, of the Licensing (Consolidation) Act, 1910, it is enacted that "any expenses incurred by the compensation authority in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties as compensation authority . . . shall be paid out of the compensation fund . . ."

The holder of the licence of an hotel applied to the licensing justices for a renewal of his licence. The application was referred by the licensing justices to the compensation authority. The compensation authority decided to refuse the renewal subject to the payment of compensation. Rules nisi for a writ of mandamus to the compensation authority to hear and determine the application according to law and for a writ of prohibition prohibiting them from acting upon their decision were obtained by the licensee on the ground that there was a probability of bias on the part of one member of the compensation authority. On the return of the rules the compensation authority appeared by counsel and shewed cause. The rules were made absolute. A resolution was afterwards passed by the compensation authority that the costs incurred by the compensation authority in appearing to shew cause against the rules should be paid out of the compensation fund. The costs were incurred in good faith and reasonably.

In an action brought by the Att.-Gen. upon the relation of the owners of the premises

**LICENSING ACTS (Licence)—continued.**

against those members of the compensation authority who caused the payment to be made, for a declaration that the payment was not authorized by the Act of 1910 and was illegal, and claiming that the defts. should repay the amount to the compensation fund:—

*Held*, that the payment was not ultra vires, inasmuch as s. 21, sub-s. 5, of the Licensing (Consolidation) Act, 1910, authorized the payment out of the compensation fund of any expenses incurred by the compensation authority in the exercise of their powers or performance of their duties as compensation authority, and it was within their powers and duties to endeavour to support, although unsuccessfully, the validity of their decision as compensation authority. *ATT.-GEN. v. THOMPSON* - Scrutton J.

[1913] 3 K. B. 198; 109 L. T. 234; [1913]

W. N. 162; 77 J. P. 287; 29 T. L. R. 510

—Fund—Creation of new county borough.

*See* LOCAL GOVERNMENT—County Borough.

**Duty.**

*See* REVENUE—Licence—Duty and Licensed Premises.

**Grant.**

*New off-licence—Power to attach conditional grant—Restriction on user—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 14.*

*REX v. BIRMINGHAM JJ. Ex parte HODSON* Div. Ct. [1912] 3 K. B. 583; 82 L. J. (K. B.) 23; [1912] W. N. 236; 77 J. P. 19; 28 T. L. R. 9

*New on-licence—Conditions—Monopoly value—Annual payment—Percentage of gross takings—Licensing justices—Jurisdiction—Grant of licence "in accordance with" Act—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 1; s. 14, sub-s. 1 (a).*

Sect. 14, sub-s. 1 (a), of the Licensing (Consolidation) Act, 1910, provides that, on the grant of a new justices' on-licence, the justices shall attach such conditions as they think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises, if they were not licensed.

On the grant of a new on-licence the justices attached as a condition that the sum to be paid as monopoly value should be an annual sum representing a percentage of each year's gross takings from the sale of intoxicants. The collector of Inland Revenue refused to grant to the licence-holder an excise licence on the ground that the justices, in fixing the monopoly value by way of an annual payment of a percentage of the takings, had not granted their licence in accordance with the Act:—

*Held* by Bray and Lush JJ. (Avery J. dissenting), that monopoly value as defined by s. 14 can only be a definite capital sum, and that the justices had no jurisdiction to attach the above condition to the grant of the licence, and that

**LICENSING ACTS (Licence)—continued.**

the grant of the excise licence had, therefore, been rightly refused. **REX v. CUSTOMS AND EXCISE COMMRs.** - Div. Ct. [1913] 3 K. B. 483; 109 L. T. 400; 77 J. P. 445; 29 T. L. R. 750

*Licensing Authority.*

*Borough licensing committee for one year—Appointment—Validity—Appointment by justices of preceding meeting—Licensing (Consolidation) Act, 1910 (10 Edw. 7 § 1 Geo. 5, c. 24), ss. 3, 10.*

**LONDON AND NORTH WESTERN RY. CO. v. BIRMINGHAM JJ.** - Div. Ct. [1912]

**W. N. 237; 77 J. P. 21**

*Disqualification of member—Bias—Member belonging to a society pledged to prohibition principles.*

*Held*, that the mere fact of belonging to a temperance society pledged to the principle of "no licence in any form under any circumstances for the sale of liquors to be used as a beverage" did not operate as a disqualification for sitting as a member of a licensing Court. **M'GEEHEN v. KNOX** - Ct. of Sess. 1913 S. C. 688

*Renewal.*

*Old on-licence—Fully licensed premises—Premises of less than required annual value—Disqualified premises—Licence void—Discretion of licensing justices to refuse renewal—Licensing (Consolidation) Act, 1910 (10 Edw. 7 § 1 Geo. 5, c. 24), ss. 18, 19, 34, 36, 37; Sched. II.; Sched. V., Part I.*

Upon an application at the general annual licensing meeting for the renewal of an old on-licence in respect of a fully licensed house which was first licensed since Aug. 10, 1872, it was proved that the annual value of the premises was less than that required by s. 37, sub-s. 1 (b), and Sched. V., Part I., of the Licensing (Consolidation) Act, 1910. The licensing justices refused the renewal upon the ground that as the premises were not of the required annual value, the licence would be void:—

*Held*, that, as the premises by reason of their deficiency in value were not qualified to receive the licence, they were "disqualified premises" within the meaning of s. 34 of the Act, and that therefore the licence, if renewed, would have been void; and that the licensing justices had jurisdiction under s. 18 and Sched. II., Part II. (B) (3), to refuse the renewal upon that ground, and were not bound to refer the question of renewal to the compensation authority under s. 19. **REX v. KINGSTON-UPON-HULL LICENSING JJ.** - Div. Ct. [1913] 2 K. B. 425;

**82 L. J. (K. B.) 946; 109 L. T. 184; [1913] W. N. 139; 77 J. P. 303; 29 T. L. R. 500**

*Refusal by licensing justices—Appeal—Jurisdiction of quarter sessions—Licensing (Consolidation) Act, 1910 (10 Edw. 7 § 1 Geo. 5, c. 24), s. 29, sub-s. 4.*

An application to justices for the transfer of an old on-licence was adjourned by the justices to the next annual general licensing meeting. Notices of objection to the renewal of the licence were served on the licence-holder and on the

**LICENSING ACTS (Licence)—continued.**

proposed transferee. The grounds of objection did not relate to the character of the licence-holder. At the annual general licensing meeting the justices refused to transfer and renew the licence to the proposed transferee on the ground that the house had been ill-conducted. No application was made by the licence-holder for a renewal of the licence to himself. The licence-holder, the proposed transferee, and the brewers appealed to quarter sessions. That Court, being of opinion that the house had not been ill-conducted but that the justices had rightly refused to grant a renewal of the licence to the proposed transferee, granted a renewal of the licence to the existing licence-holder:—

*Held*, that under s. 29, sub-s. 4, of the Licensing (Consolidation) Act, 1910, quarter sessions had power to do so. **PARKES v. DUDLEY JJ.**

**Div. Ct. [1913] 1 K. B. 1; 82 L. J. (K. B.) 337; 77 J. P. 51; 107 L. T. 855**

*Offences.*

*Closing hours—Guest of lodger—Using licensed premises for purpose of obtaining liquor—Guest unlawfully on licensed premises—Licensing (Consolidation) Act, 1910 (10 Edw. 7 § 1 Geo. 5, c. 24), s. 62, sub-s. 1.*

An information was preferred against the appellant for having been, on Sunday, Feb. 16, 1913, unlawfully on licensed premises at a time when those premises were required by law to be closed.

The appellant resided at Loughborough, and on Sunday, Feb. 16, he entertained certain guests, including his cousin, at his house. The appellant's cousin resided in London and was a lodger at the King's Head Hotel, Loughborough, from Feb. 14 to 17, 1913.

On the evening of Sunday, Feb. 16, the appellant and his guests, including his cousin, went for a motor drive, and on their return they went to the King's Head Hotel, arriving there about 10.40 P.M. That hotel is required by law to be closed on Sunday at 10 P.M.

Before entering the hotel the appellant's cousin, knowing that the hotel was required by law to be closed on Sundays at 10 P.M., invited the appellant and the others to come with him into the hotel to have a drink, as it was a cold night and he was leaving Loughborough the next morning. The appellants and the others then entered the hotel, and the appellant's cousin ordered intoxicating liquors for the party. The liquor was supplied by the licensee and was charged by him to the appellant's cousin, who subsequently paid for it.

At 11.30 P.M. two police constables entered the hotel and found the appellant and the others there, the appellant being at the time drinking whisky.

The justices decided that the appellant had entered and was upon the licensed premises at the invitation of his cousin for the purpose of obtaining intoxicating liquor. They were of opinion that the appellant was found unlawfully on the said licensed premises at the time in question, and accordingly they convicted him:—

*Held* on appeal, by way of case stated, that the justices were entitled to find as they did,

**LICENSING ACTS (Offences)—continued.**

that the appellant entered the hotel for the purpose of obtaining intoxicating liquor. Appeal dismissed. *ATKINS v. AGAR* - Div. Ct. [1913]

W. N. 300; [1914] 1 K. B. 28; 30 T. L. R. 27

*Permitting drunkenness—Two drinks ordered—Inquiry by barman—Reasonable step—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5), c. 24, s. 75.*

Where a sober person orders on licensed premises two drinks at the same time, it is a reasonable step for preventing drunkenness on the premises within the meaning of s. 75 of the Licensing (Consolidation) Act, 1910, for the barman to ascertain whether the second drink is intended for consumption by a sober person. *RADFORD v. WILLIAMS* - Div. Ct.

30 T. L. R. 108

*Permitting gaming by persons resorting to public-house—Evidence—Sufficiency—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 79, sub-s. 2.*

The appellant, a police inspector, preferred an information against T. for that he, T., on certain specified dates used a certain public-house for the purpose of betting with persons resorting thereto, and also a further information against G., the licensee of the said public-house, for that he, G., suffered the house to be used for the purpose of betting with persons resorting thereto, contrary to the Betting Act, 1853, and the Licensing (Consolidation) Act, 1910. The metropolitan magistrate by whom the case was heard found as a fact that T. had used the public bar of the public-house for the purpose of betting with persons resorting thereto on each of the dates alleged, and that G. and his servants had ample opportunity of seeing and ought to have seen the passing of the betting slips and other things being done which should have made them aware that betting was taking place, but that the prosecution had failed to give any evidence that anybody about the house had, as a fact, seen that betting was actually taking place:—

*Held*, that the case must go back to the magistrate with a direction to consider whether the respondent G. had connived at betting being carried on.

Where the facts constitute a *prima facie* case not amounting to positive proof of knowledge, there is evidence upon which a magistrate can find knowledge. *LEE v. TAYLOR AND GILL* - Div. Ct. 23 Cox, C. C. 220;

107 L. T. 682; 77 J. P. 66; 29 T. L. R. 52

*Sale of intoxicating liquor otherwise than by standard measure—Sale by servant of licensed person—Liability of servant to penalty—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 69, sub-s. 2.*

By s. 69, sub-s. 2, of the Licensing (Consolidation) Act, 1910, "if any person sells" otherwise than by standard measure any intoxicating liquor not in cask or bottle and in a quantity not less than half a pint, he is to be liable to a penalty:—

*Held*, that the words "any person" are not confined to the licence-holder or other person

**LICENSING ACTS (Offences)—continued.**

whose property the liquor is, but include the barman or other person who does the physical act of transferring the liquor to the purchaser.

*CALDWELL v. BETHELL* - Div. Ct. [1913] 1

K. B. 119; 82 L. J. (K. B.) 101; 23 Cox, C. C. 225; 77 J. P. 118; 107 L. T. 685; 29 T. L. R. 94

— Selling without licence.

*See JUSTICES.*

**Revenue.**

— Licensed premises—Annual licence value — Basis of calculation.

*See REVENUE—Licensed Premises.*

— Licensed premises—Increase of duty—Lease—Sub-lease—Liability of lessor to pay proportion of increase—"Held under a lease"—Licence-holder.

*See REVENUE.*

— Reversion duty—Determination of lease—Total value of land—Licensed premises—Value of licence.

*See REVENUE—Reversion Duty*

**Summary Jurisdiction.**

— Fine—Default of sufficient distress—Imprisonment.

*See JUSTICES.*

**LIEN—General lien—Carrier.**

*See RAILWAY—Carriage of Goods.*

*General lien—Goods in cold store—Pledge of bills of lading—Exercise of lien against holder of bills of lading.*

A co. imported into England frozen meat purchased by them in Australia. For the purpose of financing the co. in the business the plts. paid the price owing by the co. to the persons from whom the co. had bought the meat, and reimbursed themselves out of the proceeds of bills of exchange discounted by a bank, which bills had been drawn to the bank's order by the plts. and accepted by the co. The bills of lading for the meat were deposited with the bank as security that the bills of exchange would be met. On the arrival of the meat in England the co. with the assent of the bank placed the meat in the defts.' cold store to be delivered by the defts. to the bank's order or against bills of lading. The defts.' terms of storage (which were the terms usual in the trade) provided that the defts. should have a general lien on the meat for all charges accrued and accruing against the storer or for any other money due from the owners of the goods. The co. having failed to meet their acceptances, the plts. paid the bank and received the bills of lading from the bank and demanded delivery of the meat from the defts. The defts. claimed to exercise a lien on the meat for charges due to them from the co. for the storage of other goods:—

*Held*, that, the meat having been placed in the defts.' store with the assent of the bank on the terms of the defts. having a general lien, the defts. were entitled to enforce the general lien against the plts., who had succeeded to the rights of the bank as regards the meat.

**LIEN**—*continued.*

*Williams v. Allsup* (1851) 10 C. B. (N.S.) 417, followed and applied.

*JOWITT & SONS v. UNION COLD STORAGE CO.*

*Serutton J.* [1913] 3 K. B. 1; 18 Com.

Cas. 185; 82 L. J. (K.B.) 890; 108 L. T.

724; 29 T. L. R. 447; 57 S. J. 560

— Innkeeper.

*See INNKEEPER.*

— Vendor.

*See COVENANT.*

**LIFE INSURANCE.**

*See INSURANCE—Life.*

**LIGHT AND AIR**—*Ancient light—Obstruction—Height of buildings on servient tenement raised in one part and lowered in other part—No diminution in total amount of light—No damage—Negative easement over whole servient tenement.*

The plt. sought to recover damages for the alleged obstruction to his ancient light caused by the erection on part of the defts.' servient tenement of a building having a tower 35 ft. high and 10 ft. square in the place of a portion of the previous building, which was only 12 ft. 6 in. high, notwithstanding the fact that by the lowering of the remaining buildings on the defts.' servient tenement the total amount of light coming to the dominant tenement over the servient tenement was in no way diminished:—

*Held*, that the defts. were entitled to credit for the new or increased light coming over their lowered buildings and were not, in the circumstances, liable to pay any compensation, but that, having once taken credit for the new or increased light, they could not subsequently deprive the dominant tenement of it by restoring the lowered buildings to their former height.

*Held*, further, that the right to ancient light enjoyed by the dominant tenement was a negative easement over the servient tenement considered as a whole, and, since the decision in *Colls v. Home and Colonial Stores* [1904] A. C. 179, the plt. had no property or right in or to any particular cones or pencils of rays of light coming in any particular direction over any particular portion of the servient tenement, and that therefore the variation in the heights of the buildings on the servient tenement, although altering the sky line over which the ancient light used to come, conferred no right of action on the plt., provided the interference thereby occasioned did not amount to an actionable nuisance within the decision in *Colls v. Home and Colonial Stores*.

Observations of Lord Lindley in *Colls v. Home and Colonial Stores* [1904] A. C. 179, 210, 211, and of Lord Atkinson in *Jolly v. Kine* [1907] A. C. 1, 7, 8, considered. *DAVIS v. MARRABLE* Joyce J. [1913] 2 Ch. 421; 82 L. J. (K. B.) 510; 109 L. T. 33; [1913] W. N. 208; 29 T. L. R. 617; 57 S. J. 702

*Ancient lights—Obstruction—Measure of damages—Site value.*

*GRIFFITH v. REICHARD CLAY & SONS, LD.* — C. A. [1912] 2 Ch. 291; 81 L. J. (Ch.) 809; 106 L. T. 963; [1912] W. N. 140

**LIGHT, ELECTRIC.**

*See ELECTRIC LIGHT.*

**LIMITATION**—Marriage settlement—Land—Limitation to settlor for life, with ultimate limitation to his "heir-at-law"—Construction.  
*See SETTLEMENT.*

—Period of.

*See LIMITATIONS, STATUTES OF.*

—Settlement—Omission of words of limitation—Equitable estate in freehold and copyhold property—Estate for life of trustee.

*See SETTLEMENT.*

**LIMITATION OF LIABILITY**—*Plt.*—Negligence of—Limitation of pilot's liability—Power to apportion among claimants.  
*See SHIPPING—Pilot.*

**LIMITATIONS OF ACTIONS AND COSTS ACT, 1842.**

*See COUNTY COURT—Costs.*

**LIMITATIONS, STATUTES OF.**

*Acknowledgment, col. 353.*

*Action—Commencement, col. 353.*

*Administration. See below, Devastavit.*

*Alternative Remedies. See below, Special Periods of Limitation.*

*Annuity, col. 354.*

*Arrears of Maintenance, col. 354.*

*Charge, col. 355.*

*Crown Debt, col. 355.*

*Cumulative Remedies. See below, Special Periods of Limitation.*

*Devastavit, col. 355.*

*Estoppel, col. 356.*

*Executor. See above, Devastavit.*

*Infant. See below, Real Property Limitation Acts.*

*Limitation Act, 1623, col. 357.*

*Limitations of Actions and Costs Act, 1842. See COUNTY COURT.*

*Lunatic. See above, Charge.*

*Marriage Settlement. See SETTLEMENT.*

*Mortgage, col. 357.*

*Public Authorities Protection Act, 1893. See below, Special Periods of Limitation.*

*Real Property Limitation Acts, col. 357.*

*Special Periods of Limitation, col. 361.*

*Tenancy. See above, Real Property Limitation Acts.*

*Time. See above, Action—Commencement.*

*Trust, col. 363.*

*Trustee Act, 1888. See above, Devastavit.*

*Vendor and Purchaser. See VENDOR AND PURCHASER.*

*Water Rate. See above, Special Periods of Limitation.*

LIMITATIONS, STATUTES OF—*continued.*

## Acknowledgment.\*

*Acknowledgment of debt—Unconditional promise to pay.*

The action was brought to recover 50l. for money lent by the plt. to the deft. on Oct. 20, 1905. The writ was issued on Nov. 13, 1912. Upon an application by the plt., under Order XIV., r. 1, for leave to sign final judgment for the amount claimed, the deft. set up the defence of the Statute of Limitations, and the plt. in answer thereto relied upon a letter written to him by the deft. on Oct. 11, 1912, in which the following passage occurred: "I do, not forget, old friend, the debt I owe you, and which I do wish I could wipe out. Why, it must be at least six years ago since you cabled so promptly the help I then needed." The deft. obtained leave to defend, and the action was entered in the list for trial under Order XIV., r. 8.

*Held*, that the letter of Oct. 11, 1912, was a sufficient acknowledgment in writing of the debt to take the case out of the Statute of Limitations.

*Tanner v. Smart* (1827) 6 B. & C. 603, distinguished.

*Cooper v. Kendall* [1909] 1 K. B. 405, applied.  
BROWN v. MACKENZIE - Lush J. [1913]  
W. N. 75; 29 T. L. R. 310

## Action—Commencement.

*Action commenced "within six years next after the cause of such action"—Inclusion of day on which cause of action arises—Expiration of six years on Sunday—Issue of writ on following Monday—Limitation Act, 1623 (21 Jac. 1, c. 16), s. 3—R. S. C., 1883, Order LXIV., r. 3.*

By s. 3 of the Limitation Act, 1623, "All actions . . . shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say) . . . within six years next after the cause of such actions or suit."

The time for payment of a promissory note expired on Saturday, Sept. 22, 1906. The writ in an action upon the note against the makers was issued on Monday, Sept. 23, 1912 :—

*Held*, that inasmuch as the cause of action was complete at the commencement of Sept. 23, 1906, that day must be included in calculating the six years within which the action could be brought under the statute; that therefore the six years expired on Sunday, Sept. 22, 1912, and the writ was issued too late.

By the R. S. C., 1883, Ord. LXIV., r. 3, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open":—

*Held*, that, although for the purpose of calculating the time for doing anything required to be done by the R. S. C., 1883, if

LIMITATIONS, STATUTES OF (Action—Commencement)—*continued.*

the time expires on a Sunday the following Monday (if the offices are open) is to count as if it were the Sunday, the rule has no effect upon the operation of the Limitation Act, 1623, and did not prevent the issue of the writ being out of time.

The decision upon this point in *Morris v. Richards* (1881) 45 L. T. 210, followed.  
GELMINT v. MORRIGGIA - Channell J. [1913]  
2 K. B. 549; 82 L. J. (K. B.) 949; 109  
L. T. 77; [1913] W. N. 139;  
29 T. L. R. 486

## Administration.

See below, *Devastavit*.

## Alternative Remedies.

See below, *Special Periods of Limitation*.

## Annuity.

*Marriage settlement—Construction of—Annuity for wife to arise on certain events during the life of the husband and jointure after his death—Two severable annuities.*

By marriage settlement, lands held under freehold and chattel leases were conveyed to trustees on trust to permit the wife to receive and take out of the rents, issues, and profits thereof a yearly rent-charge or annuity of 100l. sterling, during her life, in case she should survive the husband, or in case the husband should during her life become bankrupt or assign, charge, or encumber the said premises, or suffer something whereby the said premises or some part thereof would through his act or default, or by operation or process of law, become vested in some other person or persons and subject thereto in trust for the husband. The husband, without the knowledge of the trustees or the wife, deposited the leases by way of equitable mortgage, and died more than twelve years afterwards. One of the leases contained a strict covenant against alienation :—

*Held*, (a) that the annuity, which arose when the husband encumbered the premises by depositing these leases with the bank, was barred; (b) that, at the husband's death, the widow became entitled to an annuity "in case she should survive her husband," which was in effect an independent annuity; and (c) that no estate passed by the settlement in the premises comprised in the lease, which contained a covenant against alienation.  
FIELD v. GRADY - Barton J. (Ir.) [1913]  
1 I. R. 121

## Arrears of Maintenance.

*Lunatic—Whether debt, or charge on personal estate—Common Law Procedure Act (Ireland), 1853 (16 & 17 Vict. c. 113), s. 20—Lunatic Asylums (Ireland) Act, 1875 (38 & 39 Vict. c. 67), s. 16.*

Arrears of maintenance of a lunatic in an asylum are an ordinary debt of the lunatic, to which the Statute of Limitations applies.

*In re O'Grady's Estate, O'Grady v. Young.*  
15 Ir. L. T. R. 45, not applied. *In re MURPHY, PRENDEGAST v. MURPHY.* - Barton J.  
[1913] 1 I. R. 504

**LIMITATIONS, STATUTES OF—continued.****Charge.**

*Will—Residuary devise and bequest—Trust to pay debts out of mixed fund—Debt, whether barred against personal but not against real estate—Limitation Act, 1623 (21 Jac. 1, c. 16)—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57).*

Testator, by his will, devised and bequeathed his residuary real and personal estate to trustees upon trust for sale and conversion, and out of the moneys produced from such sale and conversion to pay his funeral and testamentary expenses and debts, and to hold the residue upon certain trusts. He died in Nov., 1907. Shortly after his death the deft. co. made a claim for 902L. against his estate in respect of a debt which, as the Court held, arose in and subsequently to 1903, but took no steps to enforce it. On a summons by the trustees to determine the question whether the deft. co. were creditors of the testator to any and (if so) what amount:—

*Held*, that the testator by creating a mixed fund and imposing a duty not on the executors but on the trustees of paying his debts out of that mixed fund had created a charge not of a part but of the whole of the debts on the real estate, and that it could not be said that any part of the debts was attributable to the personal estate.

*Held*, therefore, that no part of the deft. co.'s debt was barred by the Statute of Limitations.

Query raised by Kay J. in *In re Stephens* (1889) 43 Ch. D. 39, 45, answered in the negative. *In re RAGGI. BRASS v. H. YOUNG & Co., LD.* - Warrington J. [1913] 2 Ch. 206; 82 L. J. (Ch.) 396; 108 L. T. 917; [1913] W. N. 149

**Crown Debt.**

*Commissioners of Public Works—Loan to occupier—Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 31, sub-s. 2—Landed Property Improvement (Ireland) Act, 1847 (10 & 11 Vict. c. 32)—Servants of the Crown—Crown debt—Statute of Limitations.*

A loan made to an occupier of land by the Commrs. of Public Works acting in execution of the Land Law (Ireland) Act, 1881, s. 31, sub-s. 2, and the provisions of the Landed Property Improvement (Ireland) Acts, made applicable thereto by Treasury Minute, is not a Crown debt, and may be barred by lapse of time by the Statute of Limitations. *ATT.-GEN. v. HOWLEY* - - - O'Connor M.R. (Ir.) [1913] 1 I. R. 455

**Cumulative Remedies.**

See below, **Special Periods of Limitation.**

**Devastavit.**

*Administration—Liability under covenants in lease—Executors of lessee's deceased, executor—Distribution among beneficiaries of lessee's residue more than six years before action—Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 1, sub-s. 3; s. 8, sub-s. 1, (b).*

**LIMITATIONS, STATUTES OF (Devastavit)—continued.**

Appeal from a decision of Warrington J. [1913] 1 Ch. 358.

The testator, Samuel Blow, was the lessee under seven leases from the plts. of certain houses for a term of forty-two years from Mar., 1885, at rents amounting in all to 2000L. per annum. Each lease contained a covenant for payment of the rent. The testator died on Jan. 8, 1902, and his will and codicil were proved in Feb., 1902, by his executors, Cambden and Dawkins. The houses in question were specifically bequeathed to the testator's wife for life, and after her death to his children. The residue was bequeathed to his wife and children in certain shares.

In 1902 the executors distributed the estate amongst the beneficiaries, taking from them an indemnity in respect of the covenants and liabilities under the leases. At that date and until 1908 the rack rents of the property were more than sufficient to provide for the rent due to the plts.

Dawkins died in 1906, and his executors were Mrs. Dawkins, A. A. Whitehead, and W. S. Lane.

The rents under the leases having fallen in arrears, the plts., in 1911, commenced this action against Cambden and the beneficiaries for administration of the estate of the testator, and asking that "so far as might be necessary to satisfy all claims of the plts., the deft., Cambden might be declared and made liable for having distributed among the other defts. portions of the testator's estate, and that he might be required to enforce his rights of indemnity against them, and they might be ordered to refund the amounts received by them," and for incidental relief.

In 1912 the writ was amended by adding the executors of Dawkins as co-defts., and asking relief against his estate.

At the trial Warrington J. granted a decree under which the estate of Dawkins would be made liable for money paid over by Cambden and Dawkins in 1902 to the beneficiaries, being of opinion that s. 8 of the Trustee Act, 1888, afforded Dawkins' executors no defence to the action. From this decision Dawkins' executors appealed.

The C. A. were of opinion that the appellants were entitled to the benefit of sub-s. 1 (b) of s. 8 of the Trustee Act, 1888, and allowed the appeal. *In re BLOW. GOVERNORS OF ST. BARTHOLOMEW'S HOSPITAL v. CAMBDEN.* - C. A.

[1913] W. N. 337; 30 T. L. R. 117; 58 S. J. 136

**Estoppel.**

*Invalid exercise of power to appoint by will—Entry of tenant for life under the will—Acquisition by, of statutory title—Position of remainderman.*

Where a person enters as tenant for life under a will, which purports to be an exercise of a power to appoint lands, whether rightfully as a proper appointee, or wrongfully under a void appointment, he is not estopped from saying as against the remain-

**LIMITATIONS, STATUTES OF (Estoppel)—**  
*continued.*

derman that the devise over to him is void as being an invalid exercise of the power.

*Paine v. Jones*, L. R. 18 Eq. 320, *In re Stringer's Estate* (1877) 6 Ch. D. 1, and *In re Anderson* [1905] 2 Ch. 70, considered and applied. *Board v. Board* (1873) L. R. 9 Q. B. 48, and *Dalton v. Fitzgerald* [1897] 2 Ch. 86, distinguished. *In re TENNENT'S ESTATE*

Wylie J. (Ir.) [1913] 1 I. R. 280

**Executor.**

*See above, Devastavit.*

**Infant.**

*See below, Real Property Limitation Acts.*

**Limitation Act, 1623.**

*See above, Acknowledgment; Action—Commencement; Charge.*

**Limitations of Actions and Costs Act, 1842.**

*See COUNTY COURT—Costs.*

**Lunatic.**

— Maintenance, arrears of.

*See above, Arrears of Maintenance and Charge.*

**Marriage Settlement.**

— After-acquired property, Covenant to settle—Lapse of time.

*See SETTLEMENT—Covenant to Settle.*

**Mortgage.**

*See above, Charge, and below, Real Property Limitation Acts.*

**Public Authorities Protection Act, 1893.**

*See below, Special Periods of Limitation.*

**Real Property Limitation Acts, 1833 and 1874.**

*Charge, col. 357.*

*Infant, col. 358.*

*Mortgage, col. 358.*

*Power of Appointment, col. 359.*

*Reversion, Severance of. See below, Tenancy.*

*Tenancy, col. 360.*

**Charge.**

*Equitable charge on lands appointed in certain shares—One share purchased by the tenant for life of the lands, and portion thereof assigned ver by him—Interest paid on the other shares from death of the tenant for life and also on the portion of the share so assigned over, but not on the remaining portion thereof—Claim to the latter arred—Real Property Limitation Act, 1874 37 & 38 Vict. c. 57), s. 8.*

Certain shares in an equitable charge of 0,000l. were appointed, pursuant to a power contained in marriage articles, to the

**LIMITATIONS, STATUTES OF (Real Property Limitation Acts, 1833 and 1874)—continued.**

daughters of the marriage, and were by them assigned to the trustees of their respective settlements. 8000l., the share appointed to one of the daughters, was afterwards paid off by J. P., the father, who was at the time tenant for life of the lands subject to the charge, and was assigned to him for his own benefit. Subsequently J. P. assigned 3001l., portion of this sum of 8000l., to the trustees of the settlement of another of the daughters. On his death in 1877 the entire charge became raisable. Since that time interest had been regularly paid on the other appointed shares and also on the 3001l., but no payment on foot of principal or interest had been made since that time or acknowledgment given in respect of the 4999l. the balance of the said sum of 8000l. :—

*Held*, that the claim to the 4999l. was barred.

*Young v. Lord Waterpark*, 8 L. J. Ch. 214, distinguished. *In re POWER'S ESTATE*

Wylie J. (Ir.) [1913] 1 I. R. 580

**Infant.**

*Adverse possession—Mother entering as bailiff — Purchaser with notice of infant's rights — Demand of possession by infant on attaining age — Notice — Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 3.*

A person entering upon an infant's estate with notice of the infant's rights becomes his bailiff.

*Quinton v. Frith*, I. R. 2 Eq. 396, followed.

A person who by so entering into possession of an infant's estate makes himself a bailiff of that estate continues to be such bailiff, notwithstanding the infant's coming of age, until the relationship is dissolved by some other circumstance or combination of circumstances.

A demand of possession by the infant will be such a circumstance, but if made within six years before action brought, it affords no defence under s. 3 of the Real Property Limitation Act, 1874. *McMAHON v. HASTINGS - O'Connor M.R. (Ir.)* [1913] 1 I. R. 395

**Mortgage.**

*Mortgagor and mortgagee—Claim for account and recovery of rents by second mortgagee against first mortgagee.*

The second mortgagee of lands claimed an account against the first mortgagee of all rents and profits of the lands received by the first mortgagee after the first mortgagee had been satisfied, and repayment by the first mortgagee of any surplus of rents in his hands, and a reconveyance of the lands. The first mortgagee, who had ceased to be in possession of the lands and in receipt of the rents and profits thereof for more than six years previous to action brought, pleaded s. 20 of the Common Law Procedure Act, 1853 (26 & 17 Vict. c. 113), as a bar to the action :—

*Held*, that the action, being one for redemption and other appropriate remedies, was



# LIMITATIONS, STATUTES OF (Real Property Limitation Acts, 1833 and 1874)—*continued.*

not barred by the section pleaded. *THE OCEAN ACCIDENT AND GUARANTEE CORPORATION, LD. AND HEWITT v. COLLUM AND ARCHDALL*

Ross J. (Ir.) [1913] 1 I. R. 328

## Power of Appointment.

*Will—Invalid execution—Power to be exercised by ante-nuptial settlement with consent of trustees of will—Post-nuptial settlement executed without such consent and in ignorance of power—Possession under invalid settlement—Title under will barred—Estate tail—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 21, 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.*

By a post-nuptial settlement made in the year 1877 between C., the wife, W., the husband, and the trustees of their ante-nuptial settlement, reciting that C. and her husband in her right had become entitled to the absolute interest in certain lands known as the W. S. Estate, a life estate in these lands was limited to W., if he survived C., with successive life estates to the three children of the marriage, with remainders to their children in tail. All the parties at the time erroneously believed that the estate had vested in C. for an absolute estate in fee-simple, as heiress-at-law of her grand-uncle. In fact, however, C.'s father, J., had survived this grand-uncle, and was his heir-at-law, and as such the lands had vested in him for an estate in fee-simple in remainder, subject to certain prior estates which subsequently determined. J. had died before C.'s marriage, having made a will by which he devised all his real estate to C. for life, with remainder to her first and other sons in tail male, and he empowered the trustees for the time being of his will, with the consent of C., to convey the lands by a settlement to be made on the occasion of her marriage to C. and her husband for their joint lives and the life of the survivor. The will contained provisions altering the limitations in favour of C.'s sons in case of her marriage with a husband entitled to real estate of certain value. The trustees of this will were not parties to the settlement of 1877.

C. died in 1882, and W. thereupon entered into possession of the W. S. Estate, and continued in possession until his death in 1905. The eldest son of the marriage had died in 1900, and on the death of W., the second son, R. (who was entitled to a life estate under the settlement, and to an estate tail, if not barred by the Statute of Limitations, under the will), entered into possession. R. was entitled to an estate tail in certain other lands, and after his father's death he executed a disentailing deed which contained general words barring all his estates tail. He died in 1907, having made a will devising all his lands to his wife, through whom the plts. claimed as assignees in her bankruptcy. On the death of R., the deft., the third child of the marriage of W. and C., went into possession of the W. S. Estate, she being entitled under the settlement to the next life estate. Until shortly before the bringing

# LIMITATIONS, STATUTES OF (Real Property Limitation Acts, 1833 and 1874)—*continued.*

of the present action all parties believed that the settlement of 1877 was a valid settlement. The action sought a declaration that the plts. were entitled to the W. S. Estate in fee-simple, and an order that the deft. should deliver up possession to them, the plts. claiming under the will of J., and through R. :—

*Held*, that the settlement of 1877 was not a good execution of the power given by J.'s will, inasmuch as it was not executed on the occasion of C.'s marriage, and the trustees of that will were not parties to it; that the possession of W. was therefore wrongful, and that although having entered under the settlement he would have been estopped from repudiating any of the limitations created by it, his possession operated under the Statute of Limitations to extinguish the title of his eldest son to the estate tail given by J.'s will, and consequently also the title of R. to the subsequent estate tail under that will, and that the plts. had no right to possession. *FRAZER AND ANOTHER v. RIVERSDALE AND ANOTHER*

Ross J. (Ir.) [1913] 1 I. R. 539

*Real estate—Trust for sale—Proceeds of sale—"Land"—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 1, 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*

A mortgagor's interest in the proceeds of sale of land held on trust for sale is an interest in "land" as defined by the Real Property Limitation Act, 1833, s. 1, and therefore, under s. 34 of the same Act and s. 8 of the Real Property Limitation Act, 1874, after the lapse of twelve years, in the absence of any payment or acknowledgment, the title of the mortgagee is extinguished.

*In re Hazledine's Trusts* [1908] 1 Ch. 34, and *Kirkland v. Peatfield* [1903] 1 K. B. 756, followed. *In re Fox. Brooks v. MARSTON*

Warrington J. [1913] 2 Ch. 75; 82 L. J. (Ch.) 393; 108 L. T. 948; [1913] W. N. 160

See above, Charge.

## Reversion, Severance of.

See below, Tenancy.

## Tenancy.

*Landlord and tenant—Agreement for lease—Holding over—Tenant to pay rent and tithes—No rent paid—Tithes paid—Evidence—Tenancy from year to year—Action for possession—Tithe Act, 1891 (54 Vict. c. 8), s. 1—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 7, 8—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.*

By an agreement dated in 1891, D. agreed to let and B. agreed to take a farm which was subject to tithe rent-charge for a term which expired on Oct. 11, 1898, at a rent of 150*l.* per annum, and in addition to pay any amount assessed or charged by way of tithe rent-charge. B. entered into possession and so remained until the issue of a writ on June 9, 1911, in an action by the owners claiming possession of the farm, having throughout the whole period repaid to D.'s agent the amounts paid by him for tithe rent-charge, but never having paid anything in

**LIMITATIONS, STATUTES OF (Real Property Limitation Acts, 1833 and 1874)—continued.**

respect of the 150*l.* rent. B. pleaded his possession, and argued that, since by the Tithe Act, 1891, his agreement as tenant to pay the tithe rent-charge was void, no inference adverse to his title could be drawn from the fact of such payments having been made by him:—

*Held* that, even assuming that the tenant's obligation to pay tithe rent-charge was void, regard must be had to the continuance of the practice obtaining during the term of repaying the tithe rent-charge to the landlord's agent, and B. was not paying them as owner of R. Farm, but under the previous arrangement. The proper inference, therefore, to be drawn was that there was a new agreement in 1899 creating the relationship of landlord and tenant between the parties under a tenancy from year to year, and, the plt.'s title not being barred, they were entitled to a declaration of their title and an order for possession. *NEALL v. BEADLE*

*Eve J. 107 L. T. 646; 57 S. J. 77*

*Mines and minerals—Title—Lease—Conveyance of reversion—Severance—Rent—Apportionment—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 9.*

Appeal by the deft. from a decision of *Eve J. [1913] W. N. 43.*

The C. A. dismissed the appeal. *MITCHELL v. MOSLEY*

*C. A. [1913] W. N. 296;*

*30 T. L. R. 29; 58 S. J. 118*

**Special Periods of Limitation.**

*Justices.* See *JUSTICES.*

*Private Street Works, col. 361.*

*Public Authorities Protection Act, 1893, col. 362.*

*Water Rate, col. 362.*

*Justices.*

See *JUSTICES.*

**Private Street Works.**

*Street—Private street works—Recovery of expenses—Summary proceedings—Proceedings in Court of competent jurisdiction—Limitation of time for summary proceedings—Application to other remedy—Cumulative remedies—Demand of expenses—Disputed apportionment—Bolton Corporation Act, 1872 (35 & 36 Vict. c. lxxviii.), s. 11—Bolton Improvement Act, 1877 (40 & 41 Vict. c. clxxviii.), s. 113—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*

On Dec. 13, 1905, the plts. served on the deft., the owner of property in a street in the borough, notice of the sum charged to him under an apportionment of the expenses of private street works which they had carried out in the street under the provisions of the Public Health Act, 1875. The deft. contended that he was entitled to an allowance in respect of a sewer which he had made; and the plts. ultimately made him some allowance in respect of this. On June 27, 1906, they made a demand on him for the balance. Under a local Act of Parliament private improvement expenses under the Public Health Acts were recoverable by the plts. either as a debt from the owner in any Court of competent

**LIMITATIONS, STATUTES OF (Special Periods of Limitation)—continued.**

jurisdiction or by distress and sale after summoning the owner, and the expenses were further made a charge on the property, and the plts. were empowered to enter into receipt of the rents and profits on default of payment. By another local Act summary proceedings for the recovery of moneys payable under the former Act might be commenced at any time within twelve calendar months of demand. In Aug., 1911, the plts. took summary proceedings against the deft. to recover the amount, but the proceedings were dismissed as not having been brought within twelve months of demand. On Mar. 12, 1912, the plts. commenced an action against the deft. in a Court of competent jurisdiction to recover the amount:—

*Held*, that the plts.' remedies were cumulative, and that the twelve months' limitation did not apply to the action.

*Blackburn Corporation v. Sanderson [1902] 1 K. B. 794, followed.*

*Held*, also, that the claim was not barred by the Statute of Limitations, and that there had been no dispute as to the apportionment within s. 150 of the Public Health Act, 1875. *MAYOR, & CO. OF BOLTON v. SCOTT*

*C. A. 11 L. G. R. 352; 108 L. T. 406; 77 J. P. 193*

**Public Authorities Protection Act, 1893.**

*Action by workman for return of moneys deducted from wages for superannuation fund under local Act for recovery of contributions paid—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1—Stepney Borough Council (Superannuation) Act, 1905 (5 Edw. 7, c. xciii.) ss. 6, 19.*

*BENNETT v. STEPNEY B. C. Div. Ct. 10 L. G. R. 954; 76 J. P. 473*

**Claim to land.**

Whether the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), applies to a case where a claim to land is in question, *quere.* *CROSS v. RIX Div. Ct. 11 L. G. R. 151; 77 J. P. 84; 29 T. L. R. 85*

**Water Rate.**

*Alternative remedy—Court of summary jurisdiction—Court of competent jurisdiction—Period of limitation—Lex fori—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 145—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 74, 85—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 21—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 3, 33.*

By the joint operation of the Waterworks Clauses Act, 1847, ss. 74 and 85, the Railways Clauses Consolidation Act, 1845, s. 145, and the Summary Jurisdiction Act, 1848, s. 11, if any person liable to pay water rate neglect to pay the same, the undertakers may recover the rate if less than 20*l.* by summary proceedings before two justices within six calendar months from the time when the matter of complaint arose.

By the Waterworks Clauses Act, 1863, s. 21, if any person neglects to pay to the

**LIMITATIONS, STATUTES OF (Special Periods of Limitation)—continued.**

undertakers any rate due to them, they may recover the same in any Court of competent jurisdiction, and this remedy is to be in addition to their other remedies for the recovery thereof.

Water rates to an amount less than 20*l.* became due and payable to undertakers whose special Act incorporated the Waterworks Clauses Acts, 1847 and 1863. More than six months after the date when the rates accrued due the undertakers brought an action in the county court, as being a Court of competent jurisdiction, to recover them :—

*Held*, that the remedy in the Court of competent jurisdiction was not subject to the six months' limitation to which summary proceedings before justices would have been subject.

*Tottenham Local Board v. Rowell* (1876) 1 Ex. D. 514, distinguished.

*Blackburn Corporation v. Sanderson* [1902] 1 K. B. 794, followed.

Decision of the Div. Ct. [1913] 1 K. B. 134, affirmed. *METROPOLITAN WATER BOARD v. BUNN C. A.* [1913] 3 K. B. 181; 82 L. J. (K. B.) 1024; 11 L. G. R. 891; 109 L. T. 132; 77 J. P. 353; 29 T. L. R. 588

**Tenancy.**

See above, **Real Property Limitation Acts.**

**Time.**

See above, **Action—Commencement.**

**Trust.**

*Express trust—Shipping agent—Sale of cargo and payment of claims—Balance in hands of agent.*

In 1883 a vessel called the *International* was wrecked off the coast of Kent. The vessel and cargo were subsequently salvaged, and the plt., who was an average adjuster carrying on business in Paris and who was acting on behalf of foreign insurers of the cargo, instructed the deft., who was a shipping agent at Ramsgate, to sell the cargo and out of the proceeds of the sale to pay all claims and expenses in connection with the cargo. The deft. accordingly sold the cargo, and after paying all claims and expenses there remained in his hands a sum of 96*l.* This sum was not paid over to the plt., nor did the plt. know that there was any money in the deft.'s hands representing the balance of the proceeds of the sale. In the deft.'s balance-sheets for the years 1884 to 1888 inclusive this sum appeared as a debt due from him, the entry being "*International*, 96*l.*," but the name of the creditor was not stated. In 1889 this sum was carried to profit and loss account, and it did not appear again in the balance-sheets. In 1912 the plt., having discovered the fact that the deft. had received this sum, brought an action to recover it, to which the deft. pleaded that the claim was barred by the Statute of Limitations. The plt., in answer to the plea of the statute, contended

**LIMITATIONS, STATUTES OF (Trust)—contd.**

that the deft. had made himself an Express trustee of this sum, and that therefore the statute did not apply :—

*Held*, that the transaction which the deft. was employed by the plt. to carry out was an ordinary commercial transaction in the way of the deft.'s business as a shipping agent, that the deft. was not bound to keep the moneys coming to his hands in the course of carrying out that transaction separate from his other moneys, and that therefore he was not in the position of an express trustee of the sum of 96*l.* for the plt., and the Statute of Limitations was a good defence to the claim. *HENRY v. HAMMOND*

Div. Ct. [1913] 2 K. B. 515; 82 L. J. (K. B.) 575; 108 L. T. 729; [1913] W. N. 85; 29 T. L. R. 340; 57 S. J. 358

**Trustee Act, 1888.**

See above, **Devastavit.**

**Vendor and Purchaser.**

— Omission to prevent acquisition of title under Statute of Limitations—Liability of vendor—Measure of damages.

See **VENDOR AND PURCHASER.**

**Water Rate.**

— Period of limitation—Alternative remedy.

See above, **Special Periods of Limitation.**

**LINK LINE** — Railway — Rating — Rateable value.

See **RATES—Rateable Value.**

**LIQUIDATED DAMAGES**—Building contract—Construction.

See **SCOTTISH LAW.**

**LIVERPOOL**—Rating—Land used as a railway—Liverpool Corporation.

See **RATES.**

**LIVERPOOL CORPORATION ACT, 1893, s. 36.**

See **RATES.**

**LLOYD'S POLICY**—Collision clause of—Construction of clause—"Collision . . . with ship or vessel"—Collision with nets of fishing vessel.

See **INSURANCE (MARINE).**

**LOAN**—Local government—Burgh—Issue of redeemable stock by municipal corporation—"Redeemable."

See **SCOTTISH LAW.**

**LOCAL AUTHORITY.**

See **LOCAL GOVERNMENT.**

**LOCAL GOVERNMENT.**

*Elections — Local Election (Alterations of Dates) Order, 1913.* 11 L. G. R. Orders, 1.

*Building*, col. 365.

*By-laws*, col. 367.

*Compensation*, col. 367.

*Contract.* See below, **Urban District Council.**

**LOCAL GOVERNMENT—continued.**

- *County Borough*, col. 363.
- County Council*, col. 369.
- Drainage*, col. 370.
- Housing, Town Planning, &c., Act.* See below, **Local Government Board.**
- Loan.* See SCOTTISH LAW.
- Local Government Board*, col. 371.
- Lunatic.* See LUNACY.
- Nuisance.* See NUISANCE, and above, **Drainage.**
- Offensive Trade*, col. 372.
- Parish Council*, col. 373.
- Private Street Works.* See below, **Streets.**
- Quarter Sessions.* See above, **County Borough and JUSTICES.**
- Rating.* See RATES.
- Rural District Council*, col. 374.
- Sewage Farm.* See above, **Drainage.**
- Sewer.* See above, **Drainage.**
- Streets*, col. 375.
- Urban District Council*, col. 377.

**Building.**

"Addition to house or building"—*Streets—Buildings—Projection beyond front main wall of house—Wooden and glazed porch not physically attached to pilasters of front door—Public Health (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), s. 3.*

The respondent was the owner and occupier of a house in a terrace with a small garden between the house and the carriage-way. The front door was approached by a pathway and a flight of stone steps. He had erected in front of the door and upon the steps a porch of wood and glass, roofed with felting, and containing a seat. The porch from back to front was 4 ft. 8½ in. deep, 7 ft. 5 in. high at the eaves, 10 ft. 1 in. high at the ridge of the roof, and 8 ft. 6 in. wide. The back of the porch was immediately adjacent to the pilasters of the front door, and projected 6 ft. 6 in. beyond the front main wall of the houses on either side. The porch was not attached in any way to the house and stood on wheels, three on each side. It was possible to move the porch a few inches from the pilasters of the doorway, but an iron railing prevented it from being moved further.

Justices dismissed proceedings against the respondent under s. 3 of the Public Health (Buildings in Streets) Act, 1888, finding that the porch was not attached to the house and did not constitute an "addition to a house or building" within the section:—

*Held*, that the justices having found these facts, their decision should not be disturbed.

SUNDERLAND CORPORATION v. CHARLTON •  
Div. Ct. 11 L. G. R. 484

*By-laws—New buildings—Vans converted*

**LOCAL GOVERNMENT (Building)—continued.**

*into dwelling-house—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 159.*

In 1909 and onwards the appellant had occupied and used, as a dwelling-house, two vans, one as a living and the other as a sleeping room. These vans had been drawn on to and stood on his own land. In 1912 he built a dwarf wall about twelve inches high. He then placed the vans side by side so that one of them rested partly on the wall. He cut out the side of one of the vans to let in a brick chimney stack into the opening so made:—

*Held*, that this was the conversion into a dwelling-house of a building not originally constructed for human habitation within s. 159 of the Public Health Act, 1875, and a contravention of by-laws of the usual type, requiring the delivery of plans to the local authority and the authority's certificate of fitness for habitation; and that the appellant had been rightly convicted of such contravention.

*Hanrahan v. Leigh-on-Sea U. D. C.* [1909]  
2 K. B. 257, followed. JAMES v. TUDOR  
Div. Ct. 11 L. G. R. 452

*Streets—Building in street—Old lane—Building line for whole street—Prescribing—Rebuilding—Notice—Compensation—Payment or tender—Refusal to set back—Mandatory injunction to pull down—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 155.*

Action based on s. 155 of the Public Health Act, 1875, for an injunction to compel the deft. to remove a building completed before writ issued.

The deft. owned a house in a street and, being desirous of pulling it down and rebuilding it on the same site, duly deposited plans with the local authority. The latter thereupon adopted a plan shewing a building line for the whole of the street, which cut a considerable slice off the site of the deft.'s house. This plan did not refer expressly to the house. The authority further resolved that his deposited plan "be not approved," and wrote to him to that effect. Correspondence ensued: the deft. insisted on rebuilding on the site of the old house and completed the new building. The authority did not give notice under which section of the Act they were proceeding or make any tender of compensation; but they commenced this action for a mandatory injunction to compel the deft. to pull down so much of the structure as was in advance of the building line. By their statement of claim they alleged that they had at all times been and now were ready to pay compensation:—

*Held*, reversing the decision of Joyce J. ([1913] W. N. 3), that a building line had been duly prescribed and that the fact that it purported to refer to the whole of the street in general terms was immaterial; that it was not necessary to give notice, and that in fact the deft.'s advisers knew, under which section the proceedings were taken; that tender of compensation was not a condition precedent to enforcing compliance with the building line, and, if it was, the deft. by his hostile attitude had waived the objection; that

**LOCAL GOVERNMENT (Building)**—*continued.*

the dispute was trivial, but the deft. had challenged the local authority and could not be allowed to avoid compliance with the building line; and that a mandatory injunction must be granted. **ATT.-GEN. v. PARISH**

**C. A. [1913] 2 Ch. 444; 82 L. J. (Ch.) 562; 11 L. G. R. 1134; 109 L. T. 57; 77 J. P. 391; [1913] W. N. 195; 29 T. L. R. 608**

See below, **Local Government Board.**

**By-laws.**

— **British Columbia.**

See **CANADA.**

— **Building.**

See above, **Building.**

*Hawking—Foreshore—Regulation of selling and hawking articles—By-laws restricting selling and hawking to portion of shore allotted by notice—Conviction for breach of by-law—Ramsgate Corporation Act, 1900 (63 & 64 Vict. c. clevi.), s. 33.*

Under powers conferred by their local Act the corporation of R. made a by-law that where any part of the seashore had by notices conspicuously affixed been set apart for the hawking of specified articles, no person should hawk such articles on any other part of the seashore. The appellant had been convicted by justices of hawking on a prohibited portion of the seashore:—

*Held*, that as there was no finding in the case which enabled the Court to say that the portion set apart for hawking was insufficient in fact, nor evidence that the corporation had improperly made the by-law for their own benefit, and nothing on the face of the case to shew the by-law was unreasonable, the conviction must be upheld.

*Per Channell J.*: By-laws of public bodies relating to seashores to which the public have access stand on a different footing to other by-laws of such bodies; and the assigning of one part for hawking of specified articles, and allowing the erection of stalls (for which the holders pay a rent to the local authority) for the sale of the same articles on another is *prima facie* within their power, so long as the portion set apart for hawking is not so wholly insufficient and obviously illusory as to be prohibitive. The principle is that local authorities are to decide local questions. **CASSELL v. JONES** - Div. Ct. 11 L. G. R. 487; 108 L. T. 806; 77 J. P. 197

**Taxicabs.**

**DUNNING v. MAHER** - Div. Ct. 10 L. G. R. 466; 23 Cox, C. C. 1; 106 L. T. 846; 76 J. P. 255

**Compensation.**

*Damage by exercise of statutory powers—Construction of sewer in street—Interference with access to premises—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 308.*

**LINCKE v. CHRISTCHURCH CORPORATION**  
**C. A. [1912] 3 K. B. 595; 82 L. J. (K. B.) 37; 10 L. G. R. 773; 107 L. T. 476; 76 J. P. 433; 28 T. L. R. 536; 56 S. J. 755**

**LOCAL GOVERNMENT**—*continued.***Contract.**

— **Not under seal.**

See below, **Urban District Council.**

**County Borough.**

*Adjustment of financial relations between county and county borough—Grant of Court of quarter sessions to borough—Redemption of liability to contribute share of costs of quarter and petty sessions and coroners—Terms on which redemption of liability to take place—Local Government Act, 1888 (51 & 52 Vict. c. 32), sub-s. 3 (b).*

By s. 31 of the Local Government Act, 1888, certain large boroughs named in the Third Schedule to the Act (of which Middlesbrough was one) were to be county boroughs.

By s. 32, sub-s. 3 (b), "If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a proper share of the costs of and incidental to the quarter sessions and petty sessions of the county, and of and incidental to the coroners of the county or any franchise therein, and if a grant of a Court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such contribution, on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act."

Middlesbrough was not at the passing of the Act a quarter sessions borough, and under an order of comms. appointed under the Act the borough paid to the county of the North Riding of Yorkshire the annual sum of 337l. 6s. 11d. in respect of the borough's share of the costs incurred by the county of and incidental to quarter sessions, petty sessions, and coroners. The share of the costs of quarter sessions, petty sessions, and coroners of the county attributable to or incurred in respect of the borough in fact exceeded in each year the sum of 337l. 6s. 11d.

In 1910 a grant of a Court of quarter sessions was made to the borough. The borough and county councils, having failed to agree upon the terms on which the liability of the borough to make the contribution of the annual sum of 337l. 6s. 11d. should be redeemed, appointed an arbitrator in accordance with s. 32, sub-s. 3 (b), of the Act:—

*Held*, first, that the words "the borough shall redeem the liability to such contribution" in s. 32, sub-s. 3 (b), did not entitle the county council to receive from the borough such a capital sum as would produce a perpetual annuity of 337l. 6s. 11d. Secondly, that it did not result from the terms of the section that the borough council were entitled to redeem the annual payment of 337l. 6s. 11d. for a nominal sum, but in ascertaining the amount to be paid by them for redemption the arbitrator must take into consideration all the circumstances of the particular case, and that he ought to take into consideration on the one hand the fact that the services which were rendered by the county council were rendered at a loss, and on the other hand the fact that, although these services

**LOCAL GOVERNMENT (County Borough)—**  
*continued.*

ceased to be rendered to the borough council, it by no means followed that the county council would prefer to the full extent to which it had lost by rendering the services. **YORKSHIRE N. R. C. v. MIDDLESBROUGH C. C.**

**Bailhache J. [1913] 1 K. B. 93; 82 L. J. (K. B.) 308; 107 L. T. 704; 11 L. G. R. 125; 77 J. P. 81**

*Licensing—Compensation authority—Creation of county borough—Compensation fund—Proportion payable to new borough—Sum standing to credit of fund—Eastbourne Corporation Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. cxviii.), s. 46—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21, sub-s. 2.*

A local Act creating a new county borough provided that the quarter sessions for the county in which the borough had previously been included should pay to the justices for the borough a certain proportion of the sum standing on a certain day to the credit of the compensation fund under the Licensing Act, 1904.

By s. 21, sub-s. 2, of the Licensing (Consolidation) Act, 1910, charges imposed for compensation purposes are to be paid together with the duties on the corresponding excise licence, but a separate account is to be kept by the Commissioners of Customs and Excise of the amount produced by those charges in the area of any compensation authority, and that amount is in each year to be paid over to that authority.

A certain amount of delay took place in the collection of the compensation levy for the year prior to the date prescribed by the local Act as the date on which the sum standing to the credit of the compensation fund for the county was to be ascertained, and a certain portion was not collected or paid over by the Commissioners of Customs and Excise to the quarter sessions for the county until after that date:—

*Held* (Avery J. dissenting), that the words of the local Act, "sum standing to the credit" of the compensation fund, meant the sum which ought to stand to the credit of the compensation fund on the prescribed day, and that therefore in ascertaining the amount standing to the credit of the fund on that day it was necessary to include compensation charges which ought to have been collected and paid over before that day, but which were collected and paid over subsequently. **REX v. SUSSEX J.J. Ex parte LANGHAM** - - - **Div. Ct. 76 J. P. 476**

**County Council.**

*Old age pensions—Committee—Appointment—Committee not validly elected—Quo warranto—Regulation enabling appointing council to remove member of committee—Validity of—Old Age Pensions Act, 1908 (8 Edw. 7, c. 40), s. 8, sub-s. 1; s. 10, sub-s. 1(c)—Old Age Pensions Regulations, 1908, reg. 21 (3) (d)—Schedule to Local Government (Application of Enactments) Order, 1898, art. 36 (10), vi., viii.*

The term of office of a local pension committee appointed under the Old Age Pensions Act, 1908, having expired, a resolution was passed at a meeting of the county council purporting to appoint a new committee which

**LOCAL GOVERNMENT (County Council)—**  
*continued.*

included M. as one of the members. The summons convening the meeting of the county council had not, as required by art. 36 (10) vi. of the Schedule to the Local Government (Application of Enactments) Order, 1898, specified the appointment of such committee as business to be transacted at the meeting. An application having been made for an information in the nature of a quo warranto against M.:—

*Held*, that the committee not having been validly appointed, there was no existing office, and therefore quo warranto did not lie.

*Quære*, is reg. 21 (3) (d) of the Old Age Pensions Regulations, 1908, enabling the appointing council at any time to remove any member of the committee, ultra vires? **REX (FITZGERALD) v. McDONALD** - **Div. Ct. (Ir.) [1913] 2 I. R. 55**

*Procedure—Proposal to make road—Necessity to include in proposal term for repayment of loan—Statutory rule—Mandatory or directory—Right of ratepayer to restrain council—Joinder of Attorney-General—Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 60—Local Government (Procedure of Councils) Order, 1899, art. 13.*

The plt., a farmer and ratepayer in the rural district of Enniskillen, sought an injunction to restrain the C. C. and the said R. D. C. from acting on a resolution approving of a proposal of the R. D. C. to make a new road. The proposal formulated by the R. D. C., and approved of by the C. C., did not embody any decision as to the number of years within which the money proposed to be borrowed should be paid off, pursuant to art. 13 (2) (a) of the Privy Council Order of Jan. 30, 1899:—

*Held* by the C. A. (affirming the decision of Ross J. [1913] 1 I. R. 63), that art. 13 (2) (a) was valid and consistent with s. 60 of the Local Government Act, 1898, and that the proposal formulated by the R. D. C. was accordingly defective and inoperative by reason of the aforesaid omission. But *held* (reversing the decision of Ross J.), that the plt. was not legally competent to sustain the action, without the joinder of the Att.-Gen., and that the action ought to be dismissed. Cherry L.J. expressed no opinion on the first point. **WEIR v. FERMANAGH C. C. AND ENNISKILLEN R. D. C.** - **C. A. (Ir.) [1913] 1 I. R. 193**

**Drainage.**

— Nuisance—Flooding—Sewer—Natural stream  
Insufficient culvert—Road and drainage authority—Statutory powers and duties  
— Negligence—Damages.  
*See SCOTTISH LAW—Local Government.*

*Sewers—Sewage Farm—Nuisance—Discharge of sewage on private land—Smell—Conveyance—Construction—Express or implied grant—Agricultural ditch—Sewer "made by any person for his own profit"—Injunction—Damages—Local government—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4; s. 13, sub-s. 1; ss. 15, 16, 17.*

**LOCAL GOVERNMENT (Drainage)—continued.**

An agricultural ditch made by the landowner for the sole purpose of draining his land and fed by surface water alone comes within sub-s. 1 of s. 13 of the Public Health Act, 1875, as a sewer made by a person for his own profit, and does not vest in the local authority.

*Sykes v. Sowerby Urban Council* [1900] 1 Q. B. 584, followed.

By the conveyance on sale to the defts. of a piece of land forming part of the site required by them for a pumping outfall for sewage, there was also granted the free right of passage and running of water from the piece of land through a drain or watercourse drawn on a plan to the conveyance, the defts. cleansing, repairing, or renewing the same so as not to cause a nuisance. The defts. allowed part of the sewage effluent from their farm to flow on to the lands of the plt. and into the channel or drain in question, and justified it by express or implied grant from their vendor and also under their statutory powers :—

*Held*, on the construction of the deed, that there was no express or implied grant of the right to discharge the effluent on to the plts.' land, and the plts. were entitled to an injunction to restrain the defts. from permitting any sewage effluent to be discharged into the ditch or sewer, but the operation of the injunction would be suspended for six months.

*Held*, further, that the plts. were entitled to 40s. damages in respect of each of the claims as to the underground flow of sewage and the nuisance caused by smells. *PHILLIMORE v. WATFORD R. D. C.* - *Eve J.* [1913] 2 Ch. 434; 82 L. J. (Ch.) 514; 11 L. G. R. 980; [1913] W. N. 244; 77 J. P. 453; 57 S. J. 741

"Single private drain or sewer"—*Public Health (Ireland) Act*, 1878 (41 & 42 Vict. c. 52), s. 2—*Public Health Acts Amendment Act*, 1890 (53 & 54 Vict. c. 59), s. 19.

A pipe connected with the drains of several dwelling-houses, owned by different owners, and constructed by the owners of those dwelling-houses, on private ground, as and used as a common conduit to receive and carry away the sewage from those houses brought down by the connecting drains, is not a "sewer" vested in the sanitary authority under s. 2 of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), but it is a "single private drain" under s. 19 of the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59). *HOLYWOOD U. D. C. v. MARGARET GRAINGER* - *Div. Ct. (Ir.)* [1913] 2 I. R. 126

**Housing, Town Planning, &c. Act.**

See below, **Local Government Board.**

**Loan.**

—Burgh—Issue of redeemable stock by municipal corporation—"Redeemable."  
See **SCOTTISH LAW.**

**Local Government Board.**

*Housing Acts—Insanitary dwelling—Closing order—Appeal to Local Government Board—Public local inquiry—Report of Inspector—Right of appellant to see report and to be heard in*

**LOCAL GOVERNMENT (Local Government Board)—continued.**

*support of appeal—Housing and Town Planning &c., Act*, 1909 (9 Edw. 7, c. 44), ss. 17, 39.

On an appeal by the owner to the Local Government Board, under the Housing and Town Planning, &c., Act, 1909, against the refusal of the local authority to determine a closing order, the appellant has a right to be heard, and to see the inspector's report on the public local inquiry held by him, and it is not competent to the Board to determine the question before them as to whether or not the closing order should be confirmed or discharged solely upon the report of the inspector who held the public local inquiry provided for by s. 39, sub-s. 1 (b), and upon the perusal of written statements by the parties :—

So *held*, on appeal, *Hamilton L.J.* dissenting.

Decision of Div. Ct. [1913] 1 K. B. 463, reversed. *REX v. LOCAL GOVERNMENT BOARD. Ex parte ARLIDGE* - *C. A.* 11 L. G. R. 1186; [1914] 1 K. B. 160; [1913] W. N. 282; 30 T. L. R. 6; 58 S. J. 10

**Lunatic.**

—Detention of alleged lunatic in workhouse—Certificate of medical officer—Action for false imprisonment against workhouse master—Stay of proceedings.  
See **LUNACY.**

**Nuisance.**

See **NUISANCE** and above, **Drainage.**

**Offensive Trade.**

*Order of local authority declaring trade offensive—Business established before Order—Public Health Act*, 1875 (38 & 39 Vict. c. 55), s. 112—*Public Health Acts Amendment Act*, 1907 (7 Edw. 7, c. 53), s. 51.

By s. 112 of the Public Health Act, 1875, "Any person who, after the passing of this Act, establishes within the district of an urban authority, without their consent in writing, any offensive trade; that is to say, the trade of" (then follow six specified trades) "or any other noxious or offensive trade, business, or manufacture, shall be liable to a penalty not exceeding 50l. in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding 40s. for every day on which the offence is continued." By s. 51 of the Public Health Acts Amendment Act, 1907, "The words 'any other trade, business, or manufacture which the local authority declare by order confirmed by the Local Government Board, and published in such manner as the Board direct, to be an offensive trade,' shall be substituted for the words 'any other noxious or offensive trade, business, or manufacture,' in section 112 of the Public Health Act, 1875" :—

*Held*, that it is not an offence to carry on a business (not being one of the six offensive trades specified in the section) which has been declared by order of the local authority to be an offensive trade, where the business was established before the coming into opera-

**LOCAL GOVERNMENT (Offensive Trade)—**  
*continued.*

tion of the order declaring it to be an offensive trade. *BUTCHERS' HIDE, SKIN, AND WOOL CO., LD. v. SEACOME*

Div. Ct. [1913] 2 K. B. 401; 82 L. J. (K. B.) 726; 11 L. G. R. 572; 23 Cox, C. C. 400; 108 L. T. 169; [1913] W. N. 109; 29 T. L. R. 415; 77 J. P. 219

**Parish Council.**

*Chairman—Duration of office—New council—Annual meeting—Right of chairman to vote at election of his successor—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3.*

By s. 3, sub-s. 1, of the Local Government Act, 1894, it is provided that a parish council shall consist of a chairman and councillors; and by sub-s. 8 that "at the annual meeting the parish council shall elect, from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall . . . continue in office until his successor is appointed."

A parish council elected a chairman from its own body. At the next election of parish councillors the chairman was a candidate but was not elected. At the annual meeting of the new council he presided as chairman. A qualified person, who was not a councillor, was proposed for chairman of the new council. The chairman voted for him, and, the votes being equal, also gave a casting vote in his favour and declared him to be the duly elected chairman of the new council:—

*Held*, that the chairman of the old council continued in office, and was, therefore, a member of the new council, until his successor was appointed, and that he was entitled to vote and to give a casting vote on the election of the new chairman, and that the election of the new chairman was valid. *REX v. JACKSON. Ex parte PICK*

Div. Ct. [1913] 3 K. B. 436; 82 L. J. (K. B.) 1215; 11 L. G. R. 1237; 109 L. T. 175; [1913] W. N. 264; 77 J. P. 443; 29 T. L. R. 735

*Purchase of land in name of former clerk to parish council—Declaration that land held for parish council.*

The plt. parish council resolved in June, 1911, to purchase twelve acres of land, partly for allotments and partly for a recreation ground. According to the plts., the deft. suggested that a private person could probably effect the purchase on better terms than the council, and thereupon it was arranged that the deft. should attend the sale and purchase the land at a price not exceeding 800l. The deft. purchased the land for 400l. and it was conveyed to him, but as he refused to convey it to the council, the plts. now claimed a declaration that he held the land as trustee for them:—

*Held*, that the plts. were entitled to the declaration asked for, but that the plts. must undertake with all convenient speed to get the necessary consent to pay the deft. the purchase price and expenses. *LONGFIELD PARISH COUNCIL v. ROBSON - - - Warrington J.*

29 T. L. R. 357

**LOCAL GOVERNMENT—continued.****Private Street Works.**

*See below, Streets.*

**Quarter Sessions.**

*See above, County Borough and JUSTICES.*

**Rating.**

— Land used as a railway—*Liverpool Corporation.*

*See RATES.*

**Rural District Council.**

*Documents—Inspection by parochial electors—Mandamus—Affidavit stating name of prosecutor—Crown Office Rules, 1906, r. 65—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 58.*

Sect. 58, sub-s. 5, of the Local Government Act, 1894, enacts that "every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books":—

*Held*, that when the clerk to a rural district council is away from his office, he must leave some person in authority who can produce the books to electors entitled to inspect them. *REX v. ANDOVER R. D. C. - Div. Ct. 11 L. G. R. 996; 77 J. P. 296; 29 T. L. R. 419*

*Highway—Parties—Action for declaration of public right of way—Defence, admission as to part, denial as to part—Action submitted to be not maintainable without joining the Attorney-General—Order taken on agreed minutes, defence being withdrawn—Attorney-General not a necessary party.*

The plt. council asked for a declaration as to a public right of way and for consequential relief. The deft., by his defence, admitted the claim as to part, but denied it as to another part, and submitted that the action was not maintainable, the Att.-Gen. not being a party. The action was subsequently settled, judgment being taken on agreed minutes, the defence being withdrawn. At the hearing it was submitted on behalf of the plts. that the action was rightly constituted:—

*Held*, that this was so, and that in the circumstances the Att.-Gen. was not a necessary party. *NEWTON ABBOT R. D. C. v. WILLS*

*Swinfen Eady J. 77 J. P. 333*

*Public right of way—Assertion of right by district council—Threat and intent to exercise right by servants or agents—Action by landowner for declaration and injunction—Reasonable cause of action—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 26.*

If a district council, acting under s. 26 of the Local Government Act, 1894, assert that there is a public right of way over the plt.'s close and threaten and intend to exercise it by their servants or agents, an action for a declaration and injunction will lie against them.

*Shafto v. Bolckow, Vaughan & Co. (1887) 34 Ch. D. 725, 728, applied.*

Whether the mere assertion that there is a public right of way and the mere provision of legal assistance for the defence of private



**LOCAL GOVERNMENT (Rural District Council)**— *continued.*

individuals, who prior to the assertion and without any reference to the district council have exercised the alleged right on their own behalf and been sued in trespass accordingly, would without more give rise to any cause of action against the district council, *quære*.  
**THORNHILL v. WEEKS** - Swinfen Eady J.  
 [1913] 1 Ch. 438; 82 L. J. (Ch) 299; 11 L. G. R. 362; [1913] W. N. 104; 77 J. P. 231; 57 S. J. 477

See PLEADING.

— Road, Resolution to make new—Loan—State-  
 ment of time for repayment.  
 See above, County Council.

**Sewage Farm.**

See above, Drainage.

**Sewer.**

See above, Drainage.

**Streets.**

— Building line.

See above, Building.

*Local Government—Fencing vacant land adjoining street—Land used to inconvenience or annoyance of public—Jurisdiction of council and justices under Local Act—Questions of fact—Willesden Urban District Council Act, 1903 (3 Edw. 7, c. clxxvii.), s. 32.*

A local Act provided that "if any land . . . adjoining any street is allowed to remain unfenced or the fences thereof are allowed to be or remain out of repair, and such land is in the opinion of the council, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purpose, or for any purpose causing inconvenience or annoyance to the public then . . . after . . . notice . . . to the owner or occupier . . . the council may cause the same to be fenced . . . and the expenses thereby incurred may be recovered from such owner or occupier summarily as a civil debt."

An owner of vacant land adjoining a street had surrounded it with a post and rail barrier. The council gave him notice under the above section that the land was not properly fenced and owing to the absence of a proper fence was used for a purpose causing inconvenience or annoyance to the public, and requiring him forthwith properly to fence the ground. On his non-compliance the council put up an "economic" fence and summoned the owner for the cost of it.

Before the justices the council were prepared to call evidence that the land in question was causing inconvenience or annoyance to the public, but the justices decided not to hear such evidence as being outside their jurisdiction and made an order for the payment of the costs:—

*Held*, that the opinion of the Council was limited to the question of lack of repair of the fence; that on the construction of the section it was for the justices and not for the council to determine whether the land was used for

**LOCAL GOVERNMENT (Streets)—continued.**

any purpose causing inconvenience or annoyance to the public, and that being a question of fact the case must go back to the justices to decide the fact.

Decision of the Div. Ct., 11 L. G. R. 313, reversed. **UPJOHN v. WILLESSEN U. D. C.**

C. A. 11 L. G. R. 1215; 30 T. L. R. 62;  
 58 S. J. 81

— Highway—Dedication—Power to gas company to break up street—Subsoil—Ownership.

See HIGHWAY—Dedication.

— Paignton Improvement Act, 1898—Urban authority—Building owner.

See HIGHWAY—Dedication.

*Private street works—Provisional apportionment—Premises fronting, adjoining, or abutting on street—Premises outside the district of the urban authority—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), s. 6.*

A district council has no power under s. 6 of the Private Street Works Act, 1892, to include in the provisional apportionment of the expenses of private street works any premises which, though fronting, adjoining, or abutting on the street, are not within the district of the council. **BISHOP AUCKLAND U. D. C. v. ALDERSON** - Div. Ct. [1913] 2 K. B. 324; 82 L. J. (K. B.) 737

*Traffic—Regulations of urban authority—Constable stationed at crossings to direct traffic—Implied obligation on part of drivers of vehicles to obey signal to stop or come on—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 21.*

Under s. 21 of the Town Police Clauses Act, 1847, by which a penalty is imposed upon drivers of vehicles in streets for the breach of traffic regulations, the corporation of B. made a regulation that constables stationed at crossings of certain streets should direct drivers of vehicular traffic approaching any such crossing by word or signal to stop or come on; but the regulation did not go on to state that the driver should comply with the constable's direction or signal or that in disobeying it he should be guilty of an offence. The driver of a motor cab disregarded the direction of a constable to stop at a crossing and was convicted by justices for a wilful breach of the regulation, and fined:—

*Held*, that the driver had incurred a penalty under s. 21 of the Act, since the regulation implied an obligation on his part to obey the direction or signal of the constable which he had wilfully disobeyed, and that the conviction must be affirmed. **DUDDERIDGE v. RAWLINGS** - Div. Ct. 11 L. G. R. 513; 23 Cox, C. C. 366; 108 L. T. 802; 77 J. P. 167

*Waterworks—Breaking up streets—Laying water pipe—Subsequent subsidence of street—Cost of repair—Compensation for damage—Jurisdiction of justices—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 6, 28, 85.*

Appeal from an order of the C. A. [1912] 3 K. B. 493.

The respondents, under a special Act which incorporated the Lands Clauses Con-

**LOCAL GOVERNMENT (Streets)—continued.**

solidation Act, 1845, and the Waterworks Clauses Act, 1847, opened and broke up the soil of a public road in the district of the Breconshire C. C. and laid a water pipe therein, and the road was restored to its original condition. Eight months after the completion of the work a portion of the road and a bank supporting it slipped, and the county council repaired the damage at a cost of 87*l*.

The appellant, the surveyor of the county council, preferred a complaint against the respondents under s. 28 of the Waterworks Clauses Act, 1847, claiming to recover the cost of the damage done to the road. The justices found that the work of laying the pipe was carried out in a proper, efficient, and workmanlike manner, and that the road was duly restored, but that the damage done to the portion of the road and bank in question was the result of the undertakers laying the water pipe therein, and they decided that the amount of the damage was the cost of repairing the highway.

The Div. Ct. affirmed the decision of the justices.

The C. A. reversed the decision of the Div. Ct., and held that the damage was not done in the execution of the undertakers' powers, and that the justices had no jurisdiction to hear the complaint.

The H. L. dismissed the appeal, being of opinion that the finding of the justices was not a finding that the damage had been done by the respondents in the execution of their statutory powers within s. 28 of the Waterworks Clauses Act, 1847, and that this was a case of land "injuriously affected by the construction of or maintenance of the works" within s. 6 of that Act; and consequently that, the damage being more than 50*l*., the justices had no jurisdiction to hear the complaint. *HARPUR v. SWANSEA CORPORATION*

*H. L. (E.) [1913] A. C. 597; 82 L. J. (K. B.) 1208; 11 L. G. R. 1087; 109 L. T. 573; [1913] W. N. 257; 77 J. P. 437; 29 T. L. R. 737; 57 S. J. 715*

— Widening—Power to take part of house.

See *LONDON*.

**Urban District Council.**

*Contract over 50*l*. in value—Not under seal but executed—Part performance—Estoppel—Highway Act, 1864 (27 & 28 Vict. c. 101), ss. 47, 48, 53—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 144, 154, 173, 174.*

*HOARE v. KINGSBURY U. D. C. - Neville J. [1912] 2 Ch. 452; 81 L. J. (Ch.) 666; 10 L. G. R. 829; 107 L. T. 492; [1912] W. N. 206; 76 J. P. 401; 56 S. J. 704*

*Contract not under seal—Executed consideration—Work done at request of corporation necessary for purpose for which corporation was created—Contract to pay implied from acceptance of benefit—Improvement commissioners—Special Act—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 174.*

The defts. as the successors of the Rhyl

**LOCAL GOVERNMENT (Urban District Council)—continued.**

Improvement Commrs., who were constituted a body corporate with a common seal by the Rhyl Improvement Act, 1852, with which was incorporated the Commissioners Clauses Act, 1847, were proposing to buy, repair, and extend the Rhyl pier under special powers in the Rhyl Improvement Acts, and definitely employed the plt., an engineer and expert in pier and harbour work, to make a certain valuation and estimates required by the Local Government Board, to which body the defts., under powers in their special Acts, had applied for sanction to borrow the money necessary for the proposed scheme. There was no contract under the seal of the defts. relative to the employment of the plt., but he made the valuation and estimates of which the defts. had the benefit and made use. Ultimately the scheme was not proceeded with. In an action by the plt. to recover his fees:—

*Held*, that the provisions of s. 174 of the Public Health Act, 1875, did not apply to the contract in question; that in the circumstances the principle of the decision in *Lawford v. Billericay Rural Council* [1903] 1 K. B. 772, applied; and that the plt. was entitled to payment upon a quantum meruit. *DOUGLASS v. RHYL U. D. C. - Joyce J. [1913] 2 Ch. 407; 82 L. J. (Ch.) 537; 11 L. G. R. 1162; 109 L. T. 30; [1913] W. N. 222; 77 J. P. 373; 29 T. L. R. 605; 57 S. J. 627*

— Powers.

See above, *Building and Streets*.

**LOCAL GOVERNMENT BOARD.**

See *LOCAL GOVERNMENT*.

**LOCOMOTIVE (PETROLEUM)**—*Home Office Regulations—Regulations dated July 31, 1907; made by the Secretary of State under s. 5 of the Locomotives on Highway Act, 1896, as to the keeping and use of petroleum for the purposes of light locomotives. 11 L. G. R. O. 33.*

**LOCOMOTIVES**—Canal made across highway—Highway carried by bridge over canal—Standard of repair.

See *BRIDGE*.

**LONDON.**

*London (County of)—Quarter Sessions—Order of the Secretary of State, dated Dec. 24, 1912, approving scheme of the London County Council for regulating the holding of Courts of Quarter Sessions for the county of London, as provided by s. 42, sub-s. 7, of the Local Government Act, 1888 (51 & 52 Vict. c. 41). W. N. 1913 (Mar. 1), p. 138.*

*Building, col. 379.*

*Common Lodging-house, col. 382.*

*Drainage, col. 382.*

*Electric Lighting. See ELECTRIC LIGHT.*

*Employment Agency, col. 383.*

*Nuisance, col. 383.*

*Poor Rate. See below, Rates, and RATES.*

*Port of London, col. 384.*

**LONDON**—*continued.**Rates, col. 385.**Streets, col. 386.**Water. See WATER.*• **Building.**

*General line of building—Erection in front of—Exemption—Powers conferred on a railway company by a special Act—London Building Act, 1894 (57 & 58 Vict. c. ccviii.), ss. 22, 31.*

By s. 22 of the London Building Act, 1894, "No building or structure shall without the consent in writing of the council be erected beyond the general line of buildings in any street." And by s. 31 of that Act, "Nothing in this part of this Act" including s. 22 "shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes."

A ry. co. in 1866 were empowered by a special Act to "enter upon, take and use" for the purposes of their ry. a certain site adjoining a street in the metropolis. The special Act incorporated the Railways Clauses Act, 1845, by s. 16 of which the co. "may erect and construct such . . . buildings . . . and other works and conveniences as they think proper" and "may do all . . . acts necessary for making maintaining . . . and using the railway." In 1908 the co. erected upon the site an accumulator shed which was used for ry. purposes in connection with the electrical signalling upon their ry. The shed was in front of the general line of buildings in the street:—

*Held*, that both the general power to "use" the site for the purposes of the ry. given by the special Act and the general powers given by the Railways Clauses Act conferred a statutory power to erect the accumulator shed upon that site within the meaning of s. 31 of the Act of 1894, and that a special power authorizing that particular work was not necessary to entitle the co. to build in front of the general building line without the consent of the county council. **METROPOLITAN RY. CO. v. LONDON COUNTY COUNCIL**

Div. Ct. [1913] 2 K. B. 249; 82 L. J. (K. B.) 542; 11 L. G. R. 494; 108 L. T. 420; 77 J. P. 190; [1913] W. N. 93; 29 T. L. R. 361

*General line of building—Resolution of Metropolitan Board of Works adopting new line in advance of existing line—Absence of superintending architect's certificate—7 Geo. 4, c. cxliii., s. 140—Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 75, 76—London Building Act, 1894 (57 & 58 Vict. c. ccviii.), ss. 22, 25, 27, 215, 216.*

The Euston Road was laid out in 1756 under an Act of that date which enacted, as was afterwards re-enacted by other Georgian Acts down to 1826, that no buildings should be erected on new foundations within fifty feet of the highway, and if so erected, were to be deemed common nuisances. The last of these Acts was repealed by the Metropolis Management Act, 1862, which provided that no building should, without the consent of the Metro-

**LONDON (Building)**—*continued.*

politan Board of Works, be erected beyond the general line of buildings, if the distance of that line from the highway did not exceed fifty feet. Long before 1862 buildings of one storey and more had been erected on the forecourts of the then existing buildings and projected beyond the fifty feet line. As to a certain section C to D, representing 380 yards of the Euston Road, the Metropolitan Board of Works in 1876, at the recommendation of their superintending architect (who, however, never gave a certificate defining it as the general line of buildings), and with the view of establishing a new and regular line of buildings eleven feet from the roadway and up to the inner edge of the pavement, roughly coinciding with existing projections, passed a resolution enabling all persons interested to build up to that frontage without restriction as to height. This resolution had been extensively acted on. In Aug., 1909, the appellants proceeded to re-erect a building on this eleven feet line. The respondents objected that the re-erection was in front of the general line of buildings, and their superintending architect certified that the general line in section C to D was the old fifty feet line. The tribunal of appeal confirmed that certificate, but stated a case for the opinion of the High Court as to whether the general building line between C and D was the eleven feet or the fifty feet line.

The Court differed.

*Held* by Ridley J., following *Fleming v. London C. C. and Metropolitan Ry. v. London C. C.* [1911] A. C. 1, that the resolution of the Metropolitan Board of Works of 1867 was a proposal for fixing a new building line and not a decision as to the general line of buildings. In the absence of the then superintending architect's certificate defining the eleven feet line as the general building line the buildings were there by consent only. The order of the tribunal of appeal confirming their superintending architect's certificate fixing the general line of buildings between C and D was therefore right.

*Held* by Lush J., that the general line of buildings between C and D was the eleven feet line; and that the resolution of the Metropolitan Board of Works of 1867 was a general invitation to persons interested to treat it as the general building line, and an unconditional permission to build up to an advanced frontage which was the general building line to which they had to conform. The action of the Metropolitan Board of Works was not ultra vires. Sect. 27 of the London Building Act, 1894, did not apply to the state of things that had arisen in the space between C and D. The tribunal of appeal had taken an erroneous view when they held that they were bound to disregard the buildings there on the authority of *Scott v. Carritt* (1900) 82 L. T. 67, and *Metropolitan Ry. v. London C. C.*, supra, and the order they made as to the space between C and D was wrong. **CLODE AND OTHERS v. LONDON C. C.** Div. Ct. 11 L. G. R. 410; 108 L. T. 110; [1913] W. N. 29; 77 J. P. 201

**LONDON (Building)**—*continued.*

*Party structure — Defective party wall — Making good or repairing — Dampness — London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), ss. 88, 90, 91.*

The tribunal adjudicating under the London Building Act, 1894, upon a dispute between a building owner and an adjoining owner as to the mode of repairing a defective party wall is not entitled to take into consideration the previous history of the wall.

Dictum of Bankes J. in *Minturn v. Barry* [1921] 2 K. B. 265, overruled.

The right conferred by the Act upon the building owner to make good a party structure which is defective or out of repair is confined to making good the party structure so that it becomes effective for the purposes for which it is actually used or intended to be used, and in determining the proper way of making good the defect the tribunal is to have due regard to the convenience of the adjoining owner.

Dampness in a wall is not a defect within the meaning of the Act, unless it renders the wall less effective for the purposes for which it is used or intended to be used; it is not a defect in a wall between two gardens.

A wall which divided the gardens of two adjoining houses in London was utilized for the retaining wall of an extension made to one of the houses. The owner of the extended house complained that the dampness of the party wall affected the basement of her extension and proposed as building owner under the London Building Act, 1894, to enter upon the premises of the adjoining owner and make good the party wall on his side. A difference having arisen under the Act, the county court judge, upon an appeal from an award of the statutory tribunal, found that the party wall was defective in that it allowed damp to percolate into the building owner's basement, but that effective work for preventing the damp could be done on her side of the wall, and held, having regard to the previous history and user of the wall, that no work should be permitted on the adjoining owner's side; and he directed that the building owner should be at liberty from her side of the wall to insert a vertical damp course in the middle of the wall:—

*Held*, that the judge had misdirected himself in holding that he could have regard to the previous history of the wall, but that the remedy proposed by him was a making good of the wall within the meaning of the Act, and that in the circumstances the misdirection was not a ground for ordering a new trial.

Order of the C. A., so far as it ordered a new trial [1912] 3 K. B. 510, reversed. *BARRY v. MINTURN* - *H. L. (E)* [1913] A. C. 584; 82 L. J. (K. B.) 1193; 11 L. G. R. 1087; 109 L. T. 573; [1913] W. N. 255; 77 J. P. 437; 29 T. L. R. 717; 57 S. J. 715

*Protection from fire — Certificate — Royal Albert Hall — Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32), s. 12.*

Sect. 12 of the Metropolis Management and Building Acts Amendment Act, 1878, which empowers the London County Council (as C.C.D.

**LONDON (Building)**—*continued.*

successors to the Metropolitan Board of Works) to make regulations for the protection from fire of certain new houses, rooms, and places of public resort, only applies to buildings coming into existence after the passing of that Act and does not apply to the Royal Albert Hall, which was opened for the entertainment of the public on Mar. 29, 1871.

The Royal Albert Hall was built on land belonging to the Commrs. of the Exhibition of 1851, and leased to the respondents by the Commrs. for that purpose and was completed and opened for the entertainment of the public on Mar. 29, 1871.

The question was whether the magistrate had jurisdiction to hear the summons.

*Held*, on appeal by way of case stated, that s. 12 of the Act of 1878 applied to buildings coming into existence after the passing of the Act only. *LONDON C. C. v. CORPORATION OF THE HALL OF ARTS AND SCIENCES - Div. Ct.* [1913] W. N. 285; 11 L. G. R. 1177; 30 T. L. R. 3

**Common Lodging-house.**

*Lodgers sleeping in separate rooms — No common eating room — Necessity for licence to keep — London County Council (General Powers) Act, 1902 (2 Edw. 7, c. clxxiii.), Part IX.*

Case stated by a metropolitan police magistrate.

The respondent was summoned for keeping four houses in Crescent Street, Kensington, as common lodging-houses without having obtained a licence from the County Council as required by Part IX. of the London County Council (General Powers) Act, 1902.

The lodgers received into the houses were so received for the night or for periods less than a week, and were of the common lodging-house or "dossier" class. Each person had a separate bedroom and there was no common room for either eating or sleeping in any of the houses. The charge for a room was 1s. per night.

The appellants contended that as the period of the letting of the rooms was in every case less than a week, the houses were "common lodging-houses." For the respondent it was contended that to constitute a common lodging-house there must be community of either eating or sleeping accommodation. The magistrate dismissed the informations.

The Div. Ct. *held* that the shortness of the period of letting was only one of the elements in the definition of a common lodging-house; that it was essential that there should be some common room for either sleeping or eating; and that as in the houses in question there was neither, they were not common lodging-houses. They accordingly dismissed the appeal. *LONDON C. C. v. HANKIN - Div. Ct.* [1913] W. N. 378

**Drainage.**

*"Drain" — "Sewer" — Liability to repair — Group of houses drained by combined operation — Departure from approved plan — Reinstatement — Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), ss. 83, 85, 250.*

A local authority made an order for the

**LONDON (Drainage)—continued.**

drainage of a group of houses by combined operation as shewn on an approved plan. The builder in carrying out the work wrongfully connected with the combined drain the drains from two houses outside the group, thereby causing a pipe passing under one of the houses in the group, which had been purchased by the respondents without notice of the builder's wrongful act, to become a sewer within the definition in s. 250 of the Metropolis Management Act, 1855, as between the local authority and the respondents. Subsequently the local authority served on the builder a notice under s. 83 of the Act of 1855 requiring him to reinstate the drainage of the group of houses in accordance with the plan originally approved, and on his default in complying with the notice the local authority themselves did the work. After the completion of the work a nuisance existed from the defective condition of the pipe under the respondents' house which carried off the drainage from the group of houses :—

*Held*, that at the date when the work of reinstating the combined drainage as originally sanctioned was completed the pipe ceased to be a sewer repairable by the local authority and became a drain, and that the respondents were liable under s. 85 of the Act of 1855 to remedy the nuisance.

*Vestry of St. Leonard, Shoreditch v. Phelan* [1896] 1 Q. B. 533, distinguished.

*KERSHAW v. ALFRED JOHN SMITH & Co., LD.*  
Div. Ct. [1913] 2 K. B. 455; 82 L. J. (K. B.) 791; 11 L. G. R. 419; 108 L. T. 651; [1913] W. N. 107; 77 J. P. 297

**Electric Lighting.**

See ELECTRIC LIGHT.

**Employment Agency.**

*Licences—Metropolis—Employment Agencies—Society for supply of lecturers—London County Council (General Powers) Act, 1910* (10 Edw. 7 § 1 Geo. 5, c. cxxviii.), ss. 4, 20.

Sect. 20 of the London County Council (General Powers) Act, 1910, enacts that "no person shall carry on an employment agency without a licence from the licensing authority authorizing him so to do" :—

*Held*, that this section is not confined to agencies for the employment of persons occupying the position of servants, or to employments involving the relationship of master and servant; and that, without laying down any general rule as to the classes of employment which fall or do not fall within the Act, an agency established for furnishing lecturers in connection with a special branch of lecturing known as "popular lectures" is within it, and must be licensed by the London C. C. LECTURE LEAGUE, LD. AND ANOTHER v. LONDON C. C. - Div. Ct. 11 L. G. R. 645; 23 Cox. C. 390; 108 L. T. 924; [1913] W. N. 117; 77 J. P. 329; 29 T. L. R. 426

**Nuisance.**

*Black smoke—Meaning of "recurrence of nuisance"—Smoke—Subsequent occurrence of*

**LONDON (Nuisance)—continued.**

*nuisance—Independent nuisance—Summons for non-compliance with statutory notice—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), ss. 4, 24.

GREENWICH B. C. v. LONDON C. C.

Div. Ct. 10 L. G. R. 488; 23 Cox. C. C. 32; 106 L. T. 887; 76 J. P. 267

*Food—Unsound fruit—Voluntary surrender of fruit by purchaser to inspector for condemnation before seizure—Liability of limited company to indictment—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), s. 47.

An indictment lies against a limited co. for the offence created by s. 47, sub-s. 3, of the Public Health (London) Act, 1891, of selling articles of food liable to be seized as unwholesome and unfit for the food of man.

But where after such a sale has taken place, and before any seizure has in fact been made by the medical officer or inspector, the purchaser has voluntarily given up the unsound goods for condemnation by a magistrate, the limited co., who sold them, are not guilty of an offence under s. 47, sub-s. 3, because the goods having been voluntarily given up were incapable of seizure.

*Reg. v. Dennis* [1894] 2 Q. B. 458, followed.

*Grivell v. Malpas* [1906] 2 K. B. 32, distinguished. *REX v. PUCK & Co., LD. AND ANOTHER* - Rowlatt J.

11 L. G. R. 136; 29 T. L. R. 11; 76 J. P. 487

*Unsound fish intended for food of man—Prosecution—Person on whose premises article was found—Condition precedent—Condemnation by justice of the peace—Public Health (London) Act, 1891* (54 & 55 Vict. c. 76), s. 47, sub-s. 2.

HEWETT v. HATTERSLEY - Div. Ct.

[1912] 3 K. B. 35; 81 L. J. (K. B.) 878; 23 Cox. C. C. 121; 10 L. G. R. 620; [1912] W. N. 161; 76 J. P. 369; 28 T. L. R. 433

**Poor Rate.**

— Valuation—Flats—Houses and buildings let out in separate tenements—Rateable value—Deductions from gross value.  
See RATES.

**Port of London.**

— Docks—Weighing goods.

See DOCKS.

*Registration of craft—Sailing barge—"All lighters, barges, and other like craft"—Port of London Act, 1908* (8 Edw. 7, c. 68), s. 11, sub-s. 2 (f) (i.).

A sailing barge is within the words "all lighters, barges, and other like craft" in the Port of London Act, 1908, s. 11, sub-s. 2 (f) (i.), and is accordingly prohibited from navigating either wholly or partly within the limits of that Act, unless she has been registered by the Port of London Authority.

Judgment of Hamilton J. [1912] 2 K. R. 585, affirmed. *SMEED, DEAN & Co. v. PORT OF LONDON AUTHORITY* - C. A. [1913] 1 K. B. 226; 82 L. J. (K. B.) 323; 12 Asp. Mar. Law Cas. 297; 108 L. T. 171; [1913] W. N. 290; 29 T. L. R. 122; 57 S. J. 172

**LONDON (Port of London)—continued.**

*Transhipment, Goods imported, for—Conveyance by sailing barge to Rochester—Liability to port dues—Port of London Act, 1908* (8 Edw. 7, c. 68), s. 13, sub-ss. 1, 5—*Port of London (Port Rates on Goods) Provisional Order Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. c.), *Schedule*, s. 9.

By s. 13, sub-s. 1, of the Port of London Act, 1908, "all goods imported from parts beyond the sea or coastwise into the port of London or exported to parts beyond the seas or coastwise from that port" shall be liable to port rates. By s. 13, sub-s. 5, "For the purpose of this section goods shall not be treated as having been imported or exported coastwise unless imported from or exported to a place seaward of a line drawn from Reculvers Towers to Colne Point."

By s. 9 of the Provisional Order confirmed by the Port of London (Port Rates on Goods) Provisional Order Act, 1910, and contained in the schedule to that Act, "no port rates shall be charged by the authority on transhipment goods, which expression wherever used in this order means and includes goods imported for transhipment only," and "for the purposes of this section the expression 'goods imported for transhipment only' shall mean goods imported from beyond the seas or coastwise for the purpose of being conveyed by sea only to any other port whether beyond the seas or coastwise" :—

*Held*, that goods brought by sea to this country and discharged at the port of London and transhipped into a sailing barge for conveyance to Rochester were not liable to port dues at the port of London. **BRITISH OIL AND CAKE MILLS, LD. v. PORT OF LONDON AUTHORITY** - **Pickford J. 30 T. L. R. 16; [1914] 1 K. B. 5; 19 Com. Cas. 13**

*Transhipment, Oil for—Discharge—Placing in tanks with oil not for transhipment—Exemption from port dues—Meaning of "as soon as practicable"—Port of London (Port Rates on Goods) Provisional Order Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. c.), *Schedule*, s. 9.

Where oil in bulk is imported into the port of London for transhipment there is no necessity, in order to entitle the oil to exemption from port dues, for identifying the actual oil, where it has been mixed with other oil not intended for transhipment. The enactment in s. 9 of the Provisional Order confirmed by the Port of London (Port Rates on Goods) Provisional Order Act, 1910, that the transhipment certificate must state that the goods have been shipped again "as soon as practicable" means "as soon as practicable having regard to the requirements of navigation." **ANGLO-AMERICAN OIL CO., LD. v. PORT OF LONDON AUTHORITY** - **Pickford J. 30 T. L. R. 14; [1914] 1 K. B. 74; 19 Com. Cas. 23**

**Rates.**

*Exemption from taxes and assessments—City of London—Poor rate—County rate—Education expenses—Equalization charge—7 Geo. 3, c. 37, s. 51—County Rates Act, 1852* (15 & 16 Vict. c. 81), s. 26—*Local Government Act, 1888* (51 & 52 Vict. c. 41), s. 68—*London (Equalization of Rates) Act, 1894* (57 & 58 Vict. c. 53), s. 1,

**LONDON (Rates)—continued.**

sub-s. 5 (b)—*Education Act, 1902* (2 Edw. 7, c. 42), s. 18.

By s. 51 of the statute 7 Geo. 3, c. 37, it was provided that certain lands reclaimed from the river Thames should vest in the adjoining owners "free from all taxes and assessments whatsoever."

The effect of the County Rates Act, 1852, was to impose substantially new taxation within the meaning of the decision of the C. A. in *Sion College v. London Corporation* [1901] 1 K. B. 617, and to impose it upon lands, tenements, and hereditaments rateable to the relief of the poor, notwithstanding that the occupiers thereof enjoyed some personal or special exemption from paying poor rate :—

*Held*, therefore, that the occupiers of the aforesaid lands were not exempt from payment of county contributions leviable in respect of (1.) education expenses of the county council under the Education Act, 1902, or (2.) equalization charge under the London (Equalization of Rates) Act, 1894, s. 1, sub-s. 5 (b), or (3.) deficiencies mentioned in s. 68, sub-ss. 4 and 5, of the Local Government Act, 1888. **ASSOCIATED NEWSPAPERS, LD. v. CITY OF LONDON CORPORATION** - **Div. Ct. [1913] 2 K. B. 281; 82 L. J. K. B. 928; 11 L. G. R. 554; 108 L. T. 789; [1913] W. N. 92; 78 J. P. 273; 29 T. L. R. 357**

*See RATES.*

**Streets.**

*Widening—Power to take part of a house—Wishes of owner—Michael Angelo Taylor's Act, 1817* (57 Geo. 3, c. xxiv.), ss. 80, 82.

In order to justify the taking of part only of a house under the provisions of Michael Angelo Taylor's Act, the facts must be such that the local authority acting in a quasi-judicial capacity can honestly come to the conclusion that it is unnecessary to take the whole. Such a conclusion cannot be come to, where the taking of the part in question will destroy the house as a house. The fact that by reconstruction the mutilated carcass may be converted into a house even of substantially the same character as before is immaterial, inasmuch as the owner cannot be compelled to effect such a reconstruction.

There is no reason for confining the meaning of the word "necessary" in s. 80 of the Act to physical necessity. The wishes and intention of the owner as well as the physical condition of the house may be circumstances to be taken into account by the local authority in making their adjudication.

Statement of Buckley J. in *J. L. Denman & Co., Ltd. v. Westminster Corporation* [1906] 1 Ch. 464, 478, adopted and followed. **DAVIES v. CORPORATION OF THE CITY OF LONDON**

**Warrington J. [1913] 1 Ch. 415; 82 L. J. (Ch.) 286; 11 L. G. R. 595; 108 L. T. 546; [1913] W. N. 73; 77 J. P. 1; 29 T. L. R. 315; 57 S. J. 341**

**Water.**

*See WATER.*

**LONDON ELECTRIC SUPPLY ACT, 1908.**

*See ELECTRIC LIGHT.*

**LUNACY.**

*Lunacy Rules of Dec. 4, 1912—Institutions for lunatics—Reports and returns. Rules, dated Dec. 4, 1912, made by the Commissioners in Lunacy with the approval of the Lord Chancellor, amending Rules of June 26, 1895.*

11 L. G. R. Orders, 51

*Regulation of Commissioners in Lunacy, 1913. Lunatic, England. Regulation, dated June 25, 1913, made by the Commissioners in Lunacy under s. 40, sub-s. 6, of the Lunacy Act, 1890, as to instruments and appliances for the mechanical restraint of lunatics.*

11 L. G. R. Orders, 72

— Bankruptcy.

See BANKRUPTCY—Lunatic.

— Criminal law.

See CRIMINAL LAW—Evidence.

— Discovery—Person of unsound mind—Next friend—Affidavit of documents.

See DISCOVERY.

*Local Government—Lunatic—Detention of alleged lunatic in workhouse—Certificate of medical officer—Action for false imprisonment against workhouse master—No want of good faith or reasonable care—Stay of proceedings—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 330.*

By s. 330, sub-s. 1, of the Lunacy Act, 1890, "A person who after the passing of this Act . . . does anything in pursuance of this Act, shall not be liable to any civil or criminal proceedings whether on the ground of want of jurisdiction or on any other ground, if such person has acted in good faith and with reasonable care."

The plt. was received as an alleged lunatic into a workhouse of which the deft. was the master under an order of a relieving officer made under s. 20 of the Lunacy Act, 1890, and requiring the deft. to receive and detain her in the workhouse for a period of three days. During that period a justice visited and examined the plt. but made no order regarding her, but the medical officer of the workhouse, before the expiration of the three days, gave a certificate in writing under s. 24 of the Act for her detention for fourteen days from its date. The plt. was detained in the workhouse for six days from the date of the certificate, when she was discharged by order of the medical officer. The plt. having brought an action for false imprisonment on the ground that her detention beyond the original period of three days was unauthorized, in the absence of an order of a justice :—

*Held*, that the Act gave special protection to officers and others acting under its powers in cases where, although they might have misconstrued the Act, and although they might have done things which they had no jurisdiction to do, they had acted in good faith and in a reasonable manner.

*Held*, further, that on the facts there was no evidence that the deft. had acted otherwise than in good faith and with reasonable care, even assuming that the further detention of the plt. beyond the original three days was

**LUNACY—continued.**

unauthorized in the absence of an order of a justice.

*Semble*, that the further detention of the plt. beyond the original three days was authorized by the medical officer's certificate.

SHACKLETON v. SWIFT

C. A. [1913] 2 K. B. 304; 82 L. J. (K. B.) 607; 11 L. G. R. 462; 108 L. T. 400;

[1913] W. N. 60; 77 J. P. 241

*Jurisdiction—Allowances to relatives of lunatic—Orders directing payment of surplus income of estate of lunatic to her daughters—Death of lunatic—Moneys in hands of committee representing unapplied surplus income—Claim by daughters—Rules in Lunacy, 1892, r. 81.*

Under orders in lunacy the net surplus income of a lunatic's estate, after providing for the maintenance of the lunatic and other allowances, was ordered to be paid to her daughters in certain shares. At the death of the lunatic the committee of her estate had in his hands certain moneys representing net surplus income received by him since the last payments made by him to the daughters, which he subsequently paid over to the administrator with the will annexed of the lunatic. These moneys were claimed by the daughters as due to them under the orders in lunacy :—

*Held*, that the death of the lunatic determined the jurisdiction in lunacy and that the moneys in the hands of the administrator were not therefore payable to the daughters, under the orders in lunacy, but formed part of the corpus of the lunatic's estate and were applicable according to the provisions of her will.

*In re Way* (1861) 30 L. J. (Ch.) 815; 3 D. F. & J. 175, and *In re Marman's Trusts* (1878) 26 W. R. 621, followed. *In re BENNETT. GREENWOOD v. BENNETT* - Warrington J.

[1913] 2 Ch. 318; 82 L. J. (Ch.) 606; 109 L. T. 302

See CRIMINAL LAW—Insanity and LIMITATIONS, STATUTES OF — Lunatic.

**LUNATIC—Settlement.**

See POOR LAW.

**MAGISTRATES.**

See JUSTICES.

**MAINTENANCE (ACTION)—Charity—Cham-perty.**

If a person makes a bargain with another to assist him in bringing an action, upon the terms that he is to receive part of the proceeds, that bargain amounts in law to champerty, although the person rendering the assistance would not have done so to a stranger or to any one other than a friend in needy circumstances. Charity may be indiscreet, but must not be mercenary.

The plt. out of charity lent a sum of 326l. 10s. to the deft. to enable him to bring an action for malicious prosecution. The deft. agreed that if he succeeded in the action, he would repay this loan, and also pay 60l. out of any damages he might recover. The deft., having succeeded in his action for malicious

**MAINTENANCE (ACTION)**—*continued.*

prosecution, repaid to the plt. 272*l.*, but refused to repay the balance of 54*l.* 10*s.* or to pay the 60*l.*, whereupon the plt. sued him to recover these sums :—

*Held*, that the plt. was entitled to recover the 54*l.* 10*s.*, but not the 60*l.* *COLE v. BOOKER*  
Bailhache J. 29 T. L. R. 295

*Suit — Common interest — Trade union — Slander on officer as such — Action by officer — Indemnity by union against costs.*

Appeal from a decision of Swinfen Eady J. [1913] 1 Ch. 259; [1912] W. N. 284.

The plt. was a member of a registered trade union called the Warwickshire Miners' Association.

The defts. Hutt and Johnson were members of the executive committee in 1907 and 1908, and the other defts. were the trustees.

In 1907 P. M., a member of the association, made various inflammatory speeches at public meetings, in which he accused various officers, and particularly Johnson, the general secretary, of misconduct in the affairs of the association, suggesting (inter alia) that the association was not conducted in a straightforward manner and that the balance sheet was false. He also accused the various lodges, including the Newdigate lodge, of not accounting for moneys received, and wrote a libel concerning Dewis, the Newdigate lodge secretary.

These speeches produced a widespread feeling of unrest among the members and threatened, unless refuted, to impair the efficiency if not the existence of the association. Many members refused to pay their contributions.

In these circumstances the executive committee resolved that the Miners' Association should indemnify the general or lodge officials who took proceedings against P. M.

Johnson commenced an action for slander, and Dewis commenced an action for libel and slander.

The solicitor of the association acted for the plt. in both actions.

Johnson recovered judgment for 1000*l.* damages and costs. A consent judgment for 25*l.* without costs was then entered for Dewis.

Pending the action a sum of 174*l.* cash had been paid by the treasurer to the solicitor out of the funds of the association on account of costs. Nothing being recoverable from P. M., a sum of 775*l.* cash, the balance of 949*l.*, the plt.'s costs in the two actions, was paid by the treasurer out of the funds of the association.

Swinfen Eady J. held that the payment of the costs was obnoxious to the law against maintenance. He therefore made a declaration that the payments were illegal and an order against Johnson for repayment of the 775*l.*

Johnson appealed.

The C. A. dismissed the appeal, holding that the case could not be distinguished from *Alabaster v. Hawness* [1895] 1 Q. B. 339. Apart altogether from the question of maintenance, the payments were not justified by express words of the rules of the association. It might possibly be that when a trade union had under its rules power to apply its funds in the attainment of specified objects, certain ancillary powers

**MAINTENANCE (ACTION)**—*continued.*

reasonably necessary for the attainment of those could be implied, but it would be stretching this principle too far to hold that a trade union was justified in defraying the costs of legal proceedings by its members, whenever an indirect benefit might be expected to result from or had resulted from the proceedings. *ORAM v. HUTT*

C. A. [1913] W. N. 314; 30 T. L. R. 55; 58 S. J. 80

**MAINTENANCE (FAMILY)**—Poor law.

See JUSTICES.

**MAINTENANCE (INFANT).**

See INFANT and WILL—Maintenance Clause.

**MAINTENANCE (LUNATIC).**

See LIMITATIONS, STATUTES OF—Lunatic.

**MAINTENANCE (WIFE).**

See DIVORCE.

**MALAY STATES**—*Registration of Titles Regulation, 1891 (Reg. IV. of 1891, State of Selangor), s. 7—Fraud—Knowledge of unregistered rights—Rectification—Trustee—Specific Relief Enactment, 1903 (Enact. IX. of 1903), s. 3, Illustration (g).*

The Registration of Titles Regulation, 1891, provides for the registration of all titles to land in the State of Selangor, and by s. 7 provides that the title of the person named in the certificate of title issued thereunder shall be indefeasible except on the ground of fraud or misrepresentation or of adverse possession for the prescriptive period. In June, 1910, one Eusope was the registered owner of 322 acres of land in Selangor, as to 58 acres of which the appellant was in possession under unregistered Malay documents constituting him the owner subject to the payment of an annual rent to Eusope. The respondents, who had knowledge of the appellant's interest, bought from Eusope the 322 acres excepting the said 58 acres. A transfer of the whole 322 acres was prepared, and in order to induce Eusope to sign it the respondents' agent told him that if he did so, the respondents would purchase the appellant's interest, and signed a document which stated "As regards Loke Yew's interest I shall have to make my own arrangements." Eusope thereupon signed the transfer. The respondents, having obtained thereunder registration of the entire 322 acres, called upon the appellant to give up possession of the 58 acres, and upon his failing to do so commenced an action, claiming possession thereof and damages. The appellant asked for rectification :—

*Held*, that the action should be dismissed and the respondents ordered to execute and register in the appellant's name a grant of the 58 acres subject to the rent reserved, on the grounds—

(1.) that, on the facts, the respondents obtained the transfer by fraud and misrepresentation.

(2.) That, apart from the exception in s. 7, as the rights of third parties did not intervene, the respondents could not better their position by obtaining registration under circumstances which



**MALAY STATES**—*continued.*

made it not honest to do so, and that it was the duty of the Court to order rectification.

(3.) That under the Specific Relief Enactment, 1903, s. 3, the respondents having bought with notice of the appellant's rights were trustees for him in respect thereof. *LOKE YEW v. PORT SWETENHAM RUBBER CO. LD.* — **P. C.**

[1913] **A. C. 491**; **82 L. J. (P. C.) 89**; **108 L. T. 497**

**MALE**—Will—Construction—Realty—Devise—Life estate—Remainder to “my nearest male heir”—“My nearest and eldest male relative.”

*See WILL—Devise.*

**MALE SERVANTS**—Inland Revenue—Driver of vehicle conveying children to school—“Coachman.”

*See REVENUE—Excise.*

**MALICE**—Libel—Privileged occasion—Co-defendants—Malice of one defendant—Printer—Ordinary course of business—Acts incidental to publication.

*See DEFAMATION.*

**MANAGER**—Receiver and manager—Company.

*See COMPANY.*

**MANAGERS**—Non-provided school—Powers of managers.

*See SCHOOL.*

**MANAGING DIRECTOR**—Company—Articles of association—Board of directors—Powers—Appointment of managing director—Power to revoke appointment.

*See COMPANY.*

**MANDAMUS** — *Affidavit—No affidavit stating name of prosecutor—Crown Office Rules, r. 65.*

Strict compliance with r. 65 of the Crown Office Rules, 1906, is necessary, for if it be not strictly observed and the applicant fails to appear in support of it, no one can be made responsible for costs as prosecutor. *REX v. ANDOVER R. D. C.* — **Div. Ct. 11 L. G. R. 996**; **77 J. P. 296**; **29 T. L. R. 419**

*Irregular affidavit—Other adequate remedy.*

A rule had been granted calling upon the Master of the Crown Office to shew cause why he should not summon a grand jury of Middlesex in the K. B. Div. under the Middlesex Grand Jury Act, 1872:—

*Held*, that the rule must be discharged on the ground that the affidavit on which it was granted was irregular and because there was another remedy open to the applicant. *REX v. MASTER OF THE CROWN OFFICE*

**Div. Ct. 29 T. L. R. 427**

### Prerogative Writ.

*Enforcement of duty to repair bridge—Vagueness of duty—Return to writ.*

*REX v. WILTS AND BERKS CANAL CO.*  
*Ex parte BERKSHIRE C. C.*

**Div. Ct. [1912] 3 K. B. 623**; **82 L. J. (K. B.) 3**;  
**10 L. G. R. 1083**; **107 L. T. 765**;  
**77 J. P. 24**

**MANDAMUS (Prerogative Writ)**—*continued.*

— Licensing Acts.

*See LICENSING ACTS—Licence.*

— Shops.

*See SHOPS.*

**MANDATORY INJUNCTION** — Building in street.

*See LOCAL GOVERNMENT—Streets.*

**MANITOBA**—Laws of.

*See CANADA.*

**MANOR** — Common, Rights of — Trespass by commoner—Serious injury to waste—Suit by fellow commoner—Injunction.

*See COMMON.*

**MANSLAUGHTER**—Murder or—Provocation.

*See CRIMINAL LAW—Murder.*

— Person convicted of—Defendant in probate action—Striking out.

*See PROBATE.*

**MANUFACTURER**—Dangerous article—Sale by manufacturer to shopkeeper—Purchase by plaintiff from shopkeeper — Defect unknown to manufacturer—Injury to plaintiff—Liability of manufacturer.

*See NEGLIGENCE.*

**MAPS**—Evidence—Market—Presumption of lost grant—Easement—Copies from Record Office.

*See MARKET.*

**MARINE INSURANCE.**

*See INSURANCE—Marine.*

**MARKET** — *Cattle — Facilities for weighing—“Mart” within cattle market occupied exclusively by a firm of auctioneers as a cattle sale yard—Weighbridge within market but outside sale yard—Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27), s. 4—Markets and Fairs (Weighing of Cattle) Act, 1891 (54 & 55 Vict. c. 70), s. 4, sub-s. 1.*

Sect. 4, sub-s. 1, of the Markets and Fairs (Weighing of Cattle) Act, 1891, enacts that “An auctioneer shall not, unless exempted by order of the Board of Agriculture from the requirements of this section, sell cattle at any mart where cattle are habitually or periodically sold, unless there are provided at that mart similar facilities for weighing cattle as are required by the principal Act and this Act in the case of cattle sold at a market or fair to which the principal Act applies.”

The corporation of C. let an enclosed space within their cattle market to the respondents, a firm of auctioneers not exempted from the above section, for their exclusive use as a sale yard. To reach this sale yard all cattle to be sold there passed through the market on payment of toll to the corporation. There was a weighbridge provided by the corporation within the market but outside the sale yard, and any animal sold by the respondents could be weighed on it. The respondents had no weighbridge in working order in their sale yard, and were summoned for not providing at “that mart” such facilities for weigh-

**MARKET—continued.**

ing cattle as were required by the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891:—

*Held*, that the market weighbridge outside the respondents' sale yard or "mart" afforded the facilities for weighing cattle required by s. 4 of the Act of 1887, and that therefore the respondents had not contravened s. 4, sub-s. 1, of the Act of 1891.

*Quere*, whether a sale yard within a market be a mart at all within the meaning of s. 4, sub-s. 1, of the latter Act. *KNOTT v. STRIDE AND ANOTHER* - Div. Ct. 11 L. G. R. 534; 109 L. T. 181; 77 J. P. 222

*Extension of market—Charter days—By days—In sine qua—Overflow—Streets subject to market rights—Presumption of lost grant—Easement—Dedication subject to obstruction—Private market—Tolls—Reasonable—Payment by sellers—Publication of charges—Evidence—Maps—Copies from Record Office.*

In 1682 Charles II. granted to H.'s predecessor in title a right to hold markets on Thursdays and Saturdays. In *Att.-Gen. v. Horner* (1884) 14 Q. B. D. 245; (1885) 11 App. Cas. 66, it was held that this charter authorized an overflow of the market into the adjoining streets on Thursdays and Saturdays, and that a lost charter for the other days of the week was not to be presumed. H. held markets on all the days of the week, made use of the adjoining streets for the purposes of these markets, and took tolls from the persons who used them; and took tolls from sellers instead of from buyers. An action was brought to restrain him from doing so:—

*Held*, that the question of a lost grant of a market on days other than Thursdays and Saturdays could not, after the decision in *Att.-Gen. v. Horner*, 14 Q. B. D. 245, be raised in that Court; that the deft. had no right in respect of a private market to overflow into the streets on days other than Thursdays and Saturdays; that he had always claimed to act under the franchise, and the Court would not presume a legal origin for a usage which was inconsistent with the right claimed and would not presume that the streets had been dedicated to the public subject to the right of overflow; that in the absence of custom or prescription or individual contracts to the contrary, market tolls were payable by the buyers and not by the sellers; that the tolls taken were reasonable and there was no obligation on a franchise owner to publish a list of his charges; that the fact that other members of the public would be benefited by the continuance of the illegal acts was immaterial.

Maps from the British Museum and Guildhall Library not admitted as evidence of particular facts without further proof.

Copy from the Record Office of a petition, stated to have been filed there but not produced, admitted.

Decision of Warrington J. [1912] W. N. 199, varied. *ATT.-GEN. v. HORNER* (No. 2)

C. A. [1913] 2 Ch. 140; 82 L. J. (Ch.) 339; 11 L. G. R. 784; 108 L. T. 609; [1913] W. N. 122; 77 J. P. 357; 29 T. L. R. 451; 57 S. J. 498

**MARKET—continued.**

*Tollable goods—Contract of sale made outside market limits—Delivery within market limits—Whether toll payable—Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 13.*

The urban district council of Ilfracombe constructed a market place in their district under the powers conferred by s. 166 of the Public Health Act, 1875. That Act incorporated the provisions of the Markets and Fairs Clauses Act, 1847.

On Dec. 9, 1912, the appellant, a farmer, at his dwelling-house, which is situate within the urban district of Ilfracombe, entered into a contract with one Trebble, a butcher, for the sale to him of two specific pigs, then alive, at the price of 10s. 6d. per score, it being a term of the contract that the appellant should kill and deliver them, and that they should be at the appellant's risk until delivered. The appellant then killed the pigs, and on Dec. 13, at a time when the market was open, delivered the carcasses to Trebble at his shop, which is also situate within the prescribed limits. The carcasses were weighed and the price ascertained at the said shop. On toll being demanded of him for the pigs he refused to pay it. He was thereupon summoned under s. 13 of the Markets and Fairs Clauses Act, and was convicted, upon the ground that the sale was not complete until delivery, and that the delivery was at a place where the appellant was prohibited from selling:—

*Held*, that the word "sell" in s. 13 was not to be construed with reference to the niceties of the law of sale or to the question whether the property had passed, but was to be understood in a popular sense; that the sale by the appellant for the purposes of the said section took place on Dec. 9, when the contract was made, and not when the carcasses were delivered; and that as the contract was made at the appellant's own dwelling-place, he was not liable to pay toll. *LAMBERT v. ROWE* - Div. Ct. [1913] W. N. 289; [1914] 1 K. B. 38

**MARKET GARDEN**—Notice to quit—"Good and sufficient cause."

*See* LANDLORD AND TENANT—Agricultural Holdings.

**MARRIAGE**—Divorce.

*See* DIVORCE and HUSBAND AND WIFE.

**MARRIAGE SETTLEMENT.**

*See* SETTLEMENT.

**MARRIAGES**—Non-parochial registers—Certificates of recording clerk.

*See* EVIDENCE—Public Document.

**MARRIED WOMAN.**

*See* DIVORCE and HUSBAND AND WIFE.

**MARRIED WOMEN'S PROPERTY ACT, 1893.**

*See* DIVORCE—Costs.

**MARSHALLING ASSETS.**

*See* ADMINISTRATION.

**MASONS.**

*See* REVENUE—Corporation Duty.

**MASTER (SUPREME COURT)** — Practice—  
Assessment of damages by a Master—  
Appeal from Master—Court to which  
appeal lies.  
*See* **APPEAL**—Court of Appeal.

**MASTER AND SERVANT**—*Authority of servant*  
—*Tort—Liability of master—By-laws—Tram-*  
*ways—Enforcing by-laws—Authority of con-*  
*ductor—Liability of L. C. C. for his acts.*

By-law 14 of the London County Council's  
Tramway By-laws provided that "No person  
shall hold or hang on to or to any part of a  
carriage or travel therein otherwise than on a  
seat provided for passengers"; and by-law  
22, "The conductor of each carriage shall  
enforce or prevent the breach of these byelaws  
. . . to the best of his ability."

A tramcar conductor in the employment of  
the defts. left the car he was in charge of in  
pursuit of boys who were following it with the  
intention of hanging on to the rear platform; he  
ran after, fell over, and injured the infant plt.,  
a boy of nine years of age, under the mistaken  
impression that the plt. was one of the boys  
following the car. It was admitted that he had  
acted as he did in order to punish the plt. or  
any other boys he might catch and to deter  
them :—

*Held*, that the act of the conductor was not  
done in the course of his employment, nor within  
the scope of his authority, and that the defts.  
were not liable in damages for the injuries  
sustained by the infant plt. **RADLEY v. LONDON**  
**C. C.** - Div. Ct. 11 L. G. R. 1035; 109 L. T.  
162; 29 T. L. R. 680

*Common employment—Breach by employers*  
*of statutory duty—Canada—Ontario.*

The doctrine of common employment does  
not apply to protect employers where in viola-  
tion of a statutory duty they put in a position a  
servant not qualified for the particular work,  
and a fellow servant is injured as a direct result  
of such unqualified servant's acts. **JONES v.**  
**CANADIAN PACIFIC RY. CO.** - P. C.  
29 T. L. R. 773

*Implied authority of servant—Liability of*  
*master—Emergency—Negligence of servant.*

**HOUGHTON v. PILKINGTON** - Div. Ct.  
[1912] 3 K. B. 308; 82 L. J. (K. B.) 79; 107  
L. T. 235; 28 T. L. R. 492; 56 S. J. 633

—Inland Revenue — Male servants—Driver of  
vehicle conveying children to school  
—"Coachman."

*See* **REVENUE—Excise.**

—Negligence of servant—Criminal liability of  
master for.

*See* **NUISANCE.**

*Negligence of servant—Inspector of gas meters*  
*acting as repairer—Scope of employment.*

An automatic gas meter, leased by the defts.  
to the plt.'s father, having got out of order, the  
plt.'s nurse, seeing in the street F., who was a  
gas fittings inspector employed by the defts.,  
asked him to mend the meter. After attempting  
to mend it, F. left his knife lying about open.  
The plt., aged four years, picked up the knife and  
injured his eye :—

*Held*, that there was no evidence that F. was

**MASTER AND SERVANT—continued.**

negligent, or that he was acting within the scope  
of his employment.

Decision of Bray J. affirmed. **FORSYTH v.**  
**MANCHESTER CORPORATION** - C. A. 107  
L. T. 600; 76 J. P. 465; 29 T. L. R. 15

*Negligence of servant—Omnibus driven by*  
*conductor—Liability of employers.*

If an omnibus is driven by the conductor, his  
employers are not liable for the consequences  
of his negligence, in the absence of evidence  
that he was authorized by them to drive the  
omnibus or that the driver was under the  
necessity of delegating his duties. **RICKETTS v.**  
**THOMAS TIELING, LD.** - Atkin J.  
30 T. L. R. 132

—Restraint of trade — Area of restriction,  
whether insufficiently defined—Reason-  
ableness.

*See* **RESTRAINT OF TRADE.**

—Sale by servant of licensed person—Licensing  
Acts—Liability of servant to penalty.

*See* **LICENSING ACTS—Offences.**

*Trade secret—Secret process—Confidential*  
*employment—Implied obligation of servant—*  
*Information as to secret process acquired during*  
*employment—Information merely committed to*  
*memory—Improper use of information—Action*  
*to restrain—Secret process not disclosed to Court*  
*—Power of Court to grant injunction.*

An ex-servant who has been confidentially  
employed in the manufacture of an article under  
a secret process is under an implied obligation to  
his late master not to use or disclose any knowledge  
or information as to that secret process acquired  
by him during his employment.

**Morison v. Moat** (1851) 9 Hare, 241; **Tuck &**  
**Sons v. Priester** (1887) 19 Q. B. D. 629; and  
**Robb v. Green** [1895] 2 Q. B. 1, 315, applied.

This principle applies to information acquired  
and retained in the servant's memory, as well as  
to information committed to writing and existing  
in a tangible form.

The observations contra in **Merryweather v.**  
**Moore** [1892] 2 Ch. 518, 524; **Lamb v. Evans**  
[1893] 1 Ch. 218, 236; **Louis v. Smellie** [1895]  
W. N. 115; 73 L. T. 226, 228; and **Measures**  
**Brothers, Ltd. v. Measures** [1910] 1 Ch. 336, 346,  
were not addressed to the case of a secret  
process.

Where the Court is satisfied that there is a  
secret process, and that the ex-servant has  
learnt a material part of it during his employ-  
ment, and has made an improper use of the  
knowledge so obtained, it can grant an injunc-  
tion, although the actual details of the secret  
process are not disclosed to the Court at the  
trial.

**Newbery v. James** (1877) 2 Mer. 446, 451,  
distinguished. **AMBER SIZE AND CHEMICAL**  
**Co., LD. v. MENZEL** - Astbury J. [1913] 2 Ch.  
239; 82 L. J. (Ch.) 573; 30 R. P. C. 433;  
109 L. T. 520; [1913] W. N. 189; 29  
T. L. R. 590; 57 S. J. 627

—Workmen's compensation.

*See* **WORKMEN'S COMPENSATION.**

**MATRIMONIAL CAUSES ACTS.**

*See* **DIVORCE—Costs and Maintenance.**

**"MAY"**—Statute—Construction—Enabling words—"May" equivalent to "must."  
See **JUSTICES—Criminal Law—Jurisdiction.**

**MEASURES**—Weights and.  
See **COAL.**

**MEDICAL EXAMINATION**—Right of employer to require medical examination of workman—Refusal of workman to submit.  
See **WORKMEN'S COMPENSATION—Compensation—Review—Incapacity.**

**MEDICAL OFFICER**—Certificate of—Detention of alleged lunatic in workhouse—Action for false imprisonment against workhouse master—Stay of proceedings.  
See **LUNACY.**

**MEDICAL PRACTITIONER**—National Insurance Act, 1911, ss. 14, 67—Rule of approved society that only a certificate of a panel doctor will be accepted—Ultra vires.  
See **INSURANCE (NATIONAL).**

**MEDICAL REFEREE**—Workmen's compensation.  
See **WORKMEN'S COMPENSATION.**

**MEETING.**  
See **COMPANY—Meeting.**

**"MEMBERS"**—Company—Winding-up—Directors "ex officio members."  
See **COMPANY—WINDING-UP—Contributors, List of.**

**MERCHANDISE MARKS**—False trade description—"British Tarragona Wine"—*Merchandise Marks Act*, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 2.

It is an offence under s. 2, sub-s. 2, of the Merchandise Marks Act, 1887, to sell as "Fine British Tarragona Wine" a mixture of 85 per cent. of wine made in England and 15 per cent. of mistella, a form of Tarragona wine used solely for blending. *HOLMES v. PIPERS, LD.*

Div. Ct. 30 T. L. R. 28

**MERCHANT SHIPPING.**  
See **SHIPPING.**

—Mortgage.  
See **MORTGAGE—Priority.**

**MERGER**—Settled estate—Tenancy for life and freehold reversion—Executory gift over—Conveyance of life estate—Intention—Merger at law and in equity.

Under the will of a testator, C. A., who died in Feb., 1889, a freehold farm stood limited to the use of the testator's widow for life with remainder to the use of her son C. B. A. in fee, with an executory gift over to G. A. in the event of the death, unmarried, of C. B. A. in the lifetime of the widow. By a deed of Dec. 9, 1889, the widow, in consideration of 10s. and of natural love and affection, conveyed the farm unto and to the use of C. B. A. for all the remainder of her life. G. A. died in 1900, having by his will devised the farm to trustees upon trust for sale and division amongst his children. In 1902 the

**MERGER**—continued.

farm was sold and the money invested. C. B. A. died intestate and unmarried on July 22, 1912, and letters of administration to his estate were granted to his mother. She was still alive. Upon an originating summons by the surviving trustee of the will of C. A., for the purposes of the Settled Land Acts, to determine who was entitled to the capital moneys representing the proceeds of sale of the farm:—

*Held*, that there was a merger of the life interest of the widow in the freehold reversion by operation of law and also in equity, inasmuch as no presumption could be made of an intention on the part of the grantee to preserve the life estate; and therefore the capital moneys in question belonged to the trustees of the will of G. A. *In re ATKINS. LIFE v. ATKINS*

Eve J. [1913] 2 Ch. 619; 109 L. T. 155;  
[1913] W. N. 262; 57 S. J. 785

**METROPOLIS.**

See **LONDON.**

**METROPOLIS MANAGEMENT ACT, 1855.**

See **LONDON.**

**METROPOLITAN WATER BOARD (CHARGES) ACT, 1907.**

See **WATER—Rate and Supply.**

**MICHAEL ANGELO TAYLOR'S ACT, 1817.**

See **LONDON—Streets.**

**MILK**—"Carrying on trade of purveyor of milk"—Sale of milk at railway station buffet—Necessity for registration—Dairies, Cowsheds, and Milkshops Orders, 1885 and 1886.

*SPIERS & POND, LD. v. GREEN* - Div. Ct.  
[1912] 3 K. B. 576; 82 L. J. (K. B.) 26;  
10 L. G. R. 1050; [1912] W. N. 238;  
77 J. P. 11; 28 T. L. R. 14

See **ADULTERATION.**

**MILL STREAM.**

See **WATER.**

**MINE.**

See **MINES.**

**MINERAL RIGHTS DUTY.**

See **REVENUE—Mineral Rights Duty.**

**MINERALS.**

See **MINES.**

**MINES.**

*Coal Mines*, col. 399.

*Execution.* See **CANADA—Ontario.**

*False Imprisonment.* See **FALSE IMPRISONMENT.**

*Grant.* See **REVENUE.**

*Lease.* See **SETTLED LAND.**

*Mineral Rights Duty.* See **REVENUE.**

*Minimum Wage.* See above, **COAL MINES.**

*Partnership.* See **STANNARIES.**

*Reservations*, col. 404.

*Revenue.* See **REVENUE.**

*Settled Estates.* See **SETTLED LAND.**

**MINES—continued.***Stannaries.* See STANNARIES.*Workmen's Compensation.* See WORKMEN'S COMPENSATION.**Coal Mines.***Explosives—Supply of—“Actual net cost to the owner”—Cost of carriage—Cost of distribution—Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 61, sub-s. 2.*

Sect. 61, sub-s. 2, of the Coal Mines Act, 1911, provides that no explosives shall be taken into or used in any mine except explosives provided by the owner, and the price, if any, charged by the owner to the workman for any explosives so provided shall not exceed the actual net cost to the owner:—

*Held*, that the “actual net cost to the owner” includes the cost of carriage to the owner's magazine, but does not include the cost of distribution from the magazine to the workman. *EVANS v. GWENDRATH ANTHRACITE COLLIERY Co., LD.*

Div. Ct. [1913] 3 K. B. 100 ;  
82 L. J. (K. B.) 983 ; 109 L. T. 102 ;  
[1913] W. N. 131 ; 29 T. L. R. 455

— “Improvements”—Payment out of capital—Collieries—Works required by Coal Mines Act, 1911.

See SETTLED LAND.

*Minimum wage—Ambiguous award—Declaratory judgment as to meaning of—Jurisdiction of Court—Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2)—R. S. C., Order XXV., r. 5.*

Where a joint district board under s. 2 of the Coal Mines (Minimum Wage) Act, 1912, make an award settling the minimum rates of wages in their district, and the award is expressed in ambiguous terms, although there is no right of appeal from the award, the High Court has jurisdiction under Order XXV., r. 5, to determine what it means, and declare the rights of the parties under it accordingly. *LOFTHOUSE COLLIERY, LD. v. OGDEN* — *Bailhache J.*  
[1913] 3 K. B. 120 ; 82 L. J. K. B. 910

*Minimum wage—District rules—Method of ascertaining earnings of miner—Validity—Certificate—Right to sue—Derbyshire (exclusive of South Derbyshire) District Rules—Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2), s. 1.*

By r. 4 of the rules for the district of Derbyshire (exclusive of South Derbyshire), made under the provisions of the Coal Mines (Minimum Wage) Act, 1912, for the purpose of ascertaining what sum is due to a workman for any pay-week in respect of his right to wages at the minimum rate regard shall be had to the amount of his actual earnings during the period consisting of the pay-week in question and as few preceding pay-weeks as shall be necessary to make up a period during which the colliery has worked not less than ten full days, provided that the period shall in no case be longer than four pay-weeks in all. By r. 7, if any question shall arise whether any workman in the district is a workman to whom the minimum rate of wages is applicable, the question shall be decided (in the last resort) by the district board, and, failing a settlement by them, by the independent chairman, and a certificate of the decision shall be

**MINES (Coal Mines)—continued.**

signed by the chairman and vice-chairman of the board or by the independent chairman, as the case may be, and such decision shall in every case be final and binding.

By reason of a strike of miners work at the defts' colliery in the early part of 1912 ceased for about six weeks. On April 10 work was resumed, but for the pay-week ending on April 16 the colliery worked only one day, and for the pay-week ending on April 23 the colliery worked only five and a half days. The plt., who was a miner employed at the colliery, claimed to be entitled to wages at the minimum rate settled under the Coal Mines (Minimum Wage) Act, 1912, for the pay-week ending on April 23. The defts. disputed his claim and the question came before the district board and finally before the independent chairman, who gave a certificate that by reason of r. 4 the plt. was excluded from the operation of s. 1 of the Act, and was not a workman to whom the minimum rate of wages was applicable in respect of the pay-week in question. The plt. thereupon brought an action in the county court to recover the difference between the minimum rate of wages and the amount actually earned by him for that week:—

*Held*, that it was a condition precedent to the plt.'s right to sue that he should have obtained a certificate that he was a workman to whom the minimum rate of wages was applicable; that r. 4 was not ultra vires; and that therefore the action was not maintainable.

*Davies v. Glamorgan Coal Co.* [1913] 3 K. B. 222, discussed. *RANDLE v. CLAY CROSS Co., LD.*  
Div. Ct. [1913] 3 K. B. 795 ; 522 L. T. 109 ;  
29 T. L. R. 624

*Minimum wage—Method of ascertaining actual daily earnings of miners—Power of joint district board to make rules as to—Inability of workman to earn minimum wage—Circumstances beyond his control—Rule requiring notice to official—Regularity and efficiency of the work—South Wales District Rules—Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2), s. 1, sub-s. 2.*

Appeal from a judgment of Pickford J. [1913] 3 K. B. 222.

The plts. were colliers employed by the defts. in their colliery, which was within the South Wales (including Monmouth) district created by the Coal Mines (Minimum Wage) Act, 1912. The joint district board constituted under that Act to settle the minimum rate of wages and the general district rules for the district failed to agree, and thereupon the chairman of the board by his award, dated July 5, 1912, settled the minimum rates of wages, and fixed the standard rate of day wage for a collier working at piece work. He also by his award made district rules for the district, r. 7 (1.) of which provided that “in ascertaining whether the minimum wage has been earned by any workman on piece work, the total earnings during two consecutive weeks shall be divided by the number of shifts and parts of shifts he has worked during such two weeks.” The plts. claimed a declaration that the rule was ultra vires and void. The district rules also contained a rule, r. 5, which provided that

**MINES (Coal Mines)—continued.**

"if at any time any workman shall, in consequence of circumstances over which he alleges he has no control, be unable to perform such an amount of work as would entitle him under the price list or other agreed rates to a sum equal to the daily minimum rate, then and in such case he shall forthwith give notice thereof to the official in charge of the district in which he shall be engaged. . . . If any workman shall act in contravention of this rule he shall forfeit the right to wages at the minimum rate for the pay in which such contravention shall take place." The plts. also claimed a declaration that this rule, so far as it provided for giving notice to the official in charge of the district was concerned, was ultra vires.

Pickford J. held that r. 7 (1.) was ultra vires and that r. 5 was intra vires as prescribing a condition with respect to the regularity and efficiency of the work to be performed.

The defts. appealed against the first part of the judgment, and the plts. gave notice of cross-appeal against the second part.

The C. A. held that r. 7 (1.) was ultra vires. The Act gave no power to the district board to make a rule for ascertaining the rate of wages actually earned. They held that r. 5 was intra vires. The Court substituted the following declaration for that made by the Court below: The Court, without expressing any opinion as to how the rate is to be ascertained, but expressing the opinion that the district board has not under the Act power to determine over what period the actual earnings of the workman are to be taken for the purpose of determining the rate of such earnings, and the deficiency, if any, of such rate below the minimum rate, declared r. 7 (1.) to be ultra vires, and the disputed portion of r. 5—"and in such case he shall forthwith give notice thereof to the official in charge of the district in which he shall be engaged"—to be intra vires. **DAVIES AND OTHERS v. GLAMORGAN COAL CO.**

C. A. [1913] W. N. 355; 30 T. L. R. 161

*Minimum wage—"Pits"—Meaning of—Wages—Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2), s. 2, sub-s. 5.*

The joint district board for West Yorkshire constituted under the Coal Mines (Minimum Wage) Act, 1912, were empowered by s. 2, sub-s. 5, of the Act to subdivide West Yorkshire into two or more districts if desirable for the purpose of settling minimum rates of wages. The masters and men upon the board were unable to agree as to the division, and his Honour Judge Amphlett, the chairman of the board, divided the district into two parts, fixing the Great Northern main line to Leeds as the line of division.

By an award dated June 10, 1912, the eastern sub-division was to include all pits situate on the east of the Great Northern Ry. line, as therein described, and the western sub-division was to include all pits situate on the west of the same ry., as similarly described, and by the same part of his award minimum rates of wages were fixed for each sub-division.

The plts., who were the owners of the mine, claimed that their collieries were in the western

**MINES (Coal Mines)—continued.**

and the defts., who represented the miners claimed that they were in the eastern sub-division the importance of the matter being that the rates of wages applicable to the western sub-division were lower than those applicable to the eastern sub-division. The question of construction was the sense in which the word "pits" was used in the chairman's award.

The learned judge found as a fact that the word "pits" was used to denote (a) the shaft; (b) the underground workings, with or without the shafts; and (c) the colliery as a whole; and that the primary meaning of "pits" was the shafts:—

Held, that the word "pits" was used to mean the shafts by which the men came up and went down, and that upon the true meaning of the word "pits" the plts.' colliery was in the eastern sub-division of West Yorkshire. **LOFTHOUSE COLLIERY, LD. v. OGDEN** - - **Bailhache J.**  
107 L. T. 827; 29 T. L. R. 179; 57 S. J. 186

*Minimum wage—Wages—Agreement that in certain circumstances workmen should get full day's pay although full day not worked—Whether superseded by rules under Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2).*

By an agreement made prior to 1912 between the defts. and their workmen it was agreed that if a fatal accident occurred in the defts.' mine before 12 o'clock, the day wagemen in the district in which the accident happened, if they came out, should be paid a full day's wage:—

Held, that in the case of a workman who was getting a higher wage than the minimum rate, this agreement was not superseded by a rule made under the Coal Mines (Minimum Wage) Act, 1912, which provided that, in the event of any interruption of work during a shift due to an emergency over which the management had no control, the workman should only be paid such a proportion of the minimum rate as the time he worked bore to the total number of hours of the shift. **MACKINNON v. NORTH'S NAVIGATION COLLIERIES (1889), LD.**

Pickford J. 29 T. L. R. 615

*Special rules—Refusal to obey lawful command—Offence—Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 51.*

Under the powers given by s. 51 of the Coal Mines Regulation Act, 1887, special rules were made for a mine providing that all persons employed in the mine should be under the control of the manager, under-manager, and deputies, and should at all times obey their lawful commands, and that any person committing a breach of any of the special rules should be guilty of an offence against the Act.

A number of trammers in a mine, whose duty was to convey tubs when filled with coal to the "straight road," and bring back the empty tubs, their pay varying with the number of tubs conveyed by them, after being at work some hours stopped work, and asked to be drawn out of the mine. They were ordered by the under-manager to return to work, but they refused to do so, saying that they had not a sufficiency of tubs, and owing to their stopping work certain miners were also compelled to leave work. One of the

**MINES (Coal Mines)—continued.**

trammers having been summoned under one of the above special rules, and convicted:—

*Held*, that the conviction under the special rule was right. **COLBECK v. WHITTHAM**

**Div. Ct. 23 Cox, C. C. 50; 107 L. T. 22; 76 J. P. 291**

*Stall system—Gangs—Stallmen—Daymen—Payment of gang's wages to stallman—Terms of contract between owners and dayman.*

The plt. was a dayman at a colliery at which stallmen and daymen worked together in gangs, the system being known as the "stall system," and the practice being for a stallman to receive the wages due to the whole gang and to pay the daymen. The stallman, after receiving the wages, absconded without paying the plt. Thereupon the plt. brought a county court action for his wages against the colliery owners. The judge held that there was no contract by the defts. with the plt. to pay him wages, and that when the defts. had paid the stallman they had carried out their part of the contract, and he gave judgment for the defts.:—

*Held*, on the facts, that there was evidence to support the judge's finding that payment to the stallman was payment to the plt. **HIGGINSON v. BLACKWELL COLLIERY CO.**

**Div. Ct. 30 T. L. R. 175**

*Statutory working day—Coal Mines Regulation Act, 1908 (8 Edw. 7, c. 57), s. 1, sub-ss. 1, 2—Exceeding limit of working day—"Meeting any danger or apprehended danger."*

It is no defence to a prosecution under s. 1, sub-s. 1, of the Coal Mines Regulation Act, 1908, that workmen were employed for more than the statutory working day to meet a danger, or apprehended danger, arising from a regularly recurring incident in the working of the mine, and not from an extraordinary occurrence.

Accordingly, it is a contravention of s. 1 to employ miners for more than the statutory working day in carrying out ordinary repairs rendered necessary by falls of roof which have accumulated during the idle period at each week-end, and which must be attended to, before work in the mine can be resumed.

Appeal dismissed. **THORNEYCROFT v. ARCHIBALD** - - **Ct. Just. Sc. 7 Adam, 78**

*Statutory working day—Time allowed below ground—Contravention of Coal Mines Regulation Act, 1908 (8 Edw. 7, c. 57), ss. 1, 7—Connivance by manager.*

By s. 1 of the Coal Mines Regulation Act, 1908, an onsetter shall not be below ground for more than nine and a half hours during any consecutive twenty-four hours, and by s. 7, sub-s. 1, if any person connives at any contravention of the Act he shall be guilty of an offence.

The appellant was manager of a coal mine in which several onsetters were below ground for periods longer than that provided by the Act on numerous dates extending over several months. No entry as to the cause was made in the register kept by the appellant under the Act, as the appellant was unable to ascertain a definite reason for the men failing to reach the surface in proper time, but on some occasions he

**MINES (Coal Mines)—continued.**

cautioned the men. The appellant had acted in good faith and he had not aided the men in evading the Act or encouraged them to disobey it. A Court of summary jurisdiction convicted the appellant of connivance at the contravention of the Act, but quarter sessions quashed the conviction:—

*Held*, that the order of quarter sessions must be affirmed. **GREGORY v. WALKER** - **Div. Ct. 77 J. P. 55**

— Support—Railway—Mines lying outside the forty yards limit.

*See RAILWAY—Mines.*

**Execution.**

— Fieri facias—Unpatented mining claim in Ontario—Seizure and sale.

*See CANADA—Ontario.*

**False Imprisonment.**

— Miner in coal mine—Refusal to work—Refusal of employers to afford facilities for leaving the mine.

*See FALSE IMPRISONMENT.*

**Grant.**

— Grant of right to let down surface—Lease of "right to work the minerals."

*See REVENUE—Mineral Rights Duty.*

**Lease.**

*See SETTLED LAND.*

**Mineral Rights Duty.**

— Rental value—Rent paid by working lessee in last working year—Arrears of rent—Landlord's property tax—Super-tax.

*See REVENUE—Mineral Rights Duty.*

**Minimum Wage.**

*See above, Coal Mines.*

**Partnership.**

— Mining partnership of two — "Company" — Winding-up—Jurisdiction—High Court—County court.

*See STANNARIES.*

**Reservations.**

*Decd—Construction—Grant of fee simple—Reservation of "mines, quarries of metals and minerals and springs of oil" by grantor—Natural gas not within reservation.*

In an exception in a conveyance of land of "all mines and quarries of metals and minerals and all springs of oil in or under the said land, whether already discovered or not":—

*Held*, that natural gas, which at the date of the conveyance possessed no commercial value, was not included, but passed to the grantee. **BARNARD-ARGUE-ROTH-STEARN'S OIL AND GAS CO. AND OTHERS v. FARQUHARSON**

**P. C. [1912] A. C. 864; 82 L. J. (P. C.) 30; 107 L. T. 332; 28 T. L. R. 590**

*Grant of land by Crown—Reservation of mines and minerals—Action by service owner to restrain*

**MINES (Reservations)—continued.**

*removal of minerals—Waiver of rights of Crown after commencement of action—Effect of waiver—Ceylon.*

The respondent was the owner of land under a grant from the Crown which expressly reserved to the Crown all mines and minerals in or upon the said lands, and he brought an action against the owner of adjacent land to restrain him from trespassing on his land and taking minerals from under it, and for the value of the minerals so taken. After the commencement of the action he obtained a written statement from the Crown that no claim was made on the part of the Crown to the minerals in question, "anything in the wording of the Crown grant notwithstanding":—

*Held*, that this waiver of the rights of the Crown had no retrospective effect so as to vest the title to the minerals in the respondent, and that the action would not lie. **FERNANDO AND ANOTHER v. DE SILVA**

**P. C. 82 L. J. (P. C.) 111; 107 L. T. 670**

**Revenue.**

— Mineral rights duty.

*See* **REVENUE—Mineral Rights Duty.**

**Settled Estates.**

— Power of leasing—Tenant for life—Statutory powers—Mining lease—Rent and profits—"Contrary intention."

*See* **SETTLED LAND.**

**Stannaries.**

*See* **STANNARIES.**

**Workmen's Compensation.**

*See* **WORKMEN'S COMPENSATION.**

**MISDESCRIPTION**—Will—Latent ambiguity—Falsa demonstratio.

*See* **WILL.**

**MISJOINDER.**

*See* **PARTIES.**

**MISREPRESENTATION**—Fraud—Contract induced by fraudulent misrepresentation.

*See* **FRAUD.**

— Fraudulent—Company—Contract to take shares—Rescission—Quotation in prospectus of report by one of the directors.

*See* **COMPANY—Prospectus.**

— Infant—Contract—Necessaries—Bill of sale—Fraudulent misrepresentation as to age.

*See* **INFANT—Contract.**

**MISTAKE**—Money paid under bona fide—Water—Supply by contract—Claim to recover money overpaid—*Ignorantia legis*—Liability to supply at lower rate dependent on failure of customer's supply from other sources—Absence of notice of such failure.

Upon a special case stated by an arbitrator, it appeared that by an indenture dated Jan. 17, 1900, and made between the claimants, owners of brick and tile works, and the urban district council of Nuneaton and Chilvers Coton, prede-

**MISTAKE—continued.**

cessors of the Nuneaton Corporation (inter alia), as the local water authority, the council covenanted that they and their successors would, in the event of the claimants being unable to obtain sufficient water for the purposes of their brick and tile works from sources therein specified, supply the claimants at a cost price not exceeding 2d. per 1000 gallons. The claimants had, previously to the making of such contract, been supplied with water for their brick and tile works by the council from their main at the full rate of 8d. per 1000 gallons, and, after making the contract, continued to pay the full rate of 8d. down to Jan., 1910, when they claimed to be entitled to have had the water supplied to them at 2d. per 1000 gallons, and demanded a return of 6d. per 1000 gallons overpaid during the preceding ten years, as money paid under a mistake of fact:—

*Held*, on the question of the corporation's liability to repay and reversing the decision of Bailhache J. on that point, 11 L. G. R. 397, that the right of the claimants to be supplied with water at the lower rate arose only when the supply from their own sources had become exhausted, and that they could then, and not till then, require a supply at cost price for the purposes of their works. No such notice having been given by the claimants, they were liable to pay for such water as they had used at the standard rate charged to any other ratepayer.

*Semble*, the money sought to be recovered was paid under a mistake of law.

*Quere* whether, in any event, the claimants could have recovered overpayments more than for six years back. **STANLEY BROTHERS, LD. v. NUNEATON CORPORATION - C. A. 11 L. G. R. 902; 108 L. T. 986; 77 J. P. 349; 57 S. J. 592**

— Money paid under mistake of fact—Right to recover—Tithes paid under mistake of fact to sequestrator.

*See* **TITHE RENT-CHARGE.**

*Poor rate—Statutable deduction for poor rate—Waiver for many years of right to make deduction—Mistake and ignorance of law—Presumption of lost deed.*

The debts, and their predecessors in title had, since 1838, paid to the plt. and her predecessor in title a rent-charge of 50l. Irish, charged on certain premises vested in the debts., without making any deduction for poor rate. In 1911 the debts. for the first time claimed to make the statutory deduction for poor rate:—

*Held*, that mistake and ignorance of law was a reasonable explanation, and that a lost deed releasing the right to make the statutory deduction for poor rate ought not to be presumed against the debts. **CORCORAN v. WADE**

**Ross J. [1913] 1 I. R. 25**

— Sale of goods—Auction—Misleading catalogue—Lot put up for sale—Mistake by bidder as to subject-matter.

*See* **SALE OF GOODS.**

— Workmen's compensation.

*See* **WORKMEN'S COMPENSATION—Accident—Notice, and Compensation—Agreement.**



**"MODERATE" SPEED—Collision—Fog.***See* SHIPPING—Collision.**MONEY HAD AND RECEIVED—Payment under compulsion of law—Legal process in a foreign country—Action for recovery of money.**

The rule that money paid under compulsion of legal process cannot be recovered back applies, where the legal process is that of a foreign Court of law. *CLYDESDALE BANK, LD. v. SCHRÖDER & Co.* - *Bray J.* [1913] 2 K. B. 1; 82 L. J. (K. B.) 750

**MONEY PAID IN MISTAKE.***See* MISTAKE.**MONEY-LENDER—Interest grossly in excess of risk—Transaction re-opened as harsh and unconscionable—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.**

Where on a loan by a money-lender the rate of interest charged is grossly excessive as compared with the risk, having regard to the facts as to the financial position of the borrower known to the lender, or which would have been known to him, if he had made proper inquiries, the Court may re-open the transaction as being "harsh and unconscionable" within the meaning of s. 1 of the Money-lenders Act, 1900, although the borrower is competent, and there is no element of fraud or other unfairness in the transaction.

Interest charged at the rate of 80 per cent. per annum, where the Court was of opinion that the reasonable rate, having regard to the risk and all the circumstances, should not have exceeded 25 per cent., held sufficient of itself to entitle the borrower to have the transaction re-opened. *THOMAS v. ASHBROOK (VISCOUNT)* Div. Ct. (Ir.) [1913] 2 I. R. 416

**Re-opening transaction—Excessive interest—"Harsh and unconscionable"—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.**

The Court, being of opinion that the interest charged by the money-lender for a loan was, in view of the borrower's financial position, excessive, re-opened the transaction of loan and reduced the rate of interest. *STIRLING v. MUSGRAVE* - *Bankes J.* 29 T. L. R. 333

**Re-opening transaction—"Harsh and unconscionable"—Excessive interest—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.**

The deft. borrowed from the plt., who was a money-lender, the sum of 1000*l.*, and gave a promissory note for 1600*l.*, which was payable in instalments spread over twelve months, the first payment to be 150*l.*, at the end of three months, and there was the usual default clause. The deft. made default in paying the first instalment and the plt. brought an action to recover the 1600*l.* The deft. gave evidence that the plt. agreed that the interest should be 60 per cent. per annum, but did not explain the default clause, and that it was agreed that he should be at liberty to pay off the whole amount at any time and only pay interest at 60 per cent. After action the deft. paid the principal and offered to pay 60 per cent. interest:—

*Held*, that the note did not contain all the terms of the bargain, that the deft. did not understand the effect of the default clause, that

**MONEY-LENDER—continued.**

the transaction was harsh and unconscionable, and that the plt. should have judgment for 60 per cent. on 1000*l.* up to the date when the offer was made. *STIRLING v. ROSE* - *Avory J.* 30 T. L. R. 67

**MONOPOLY VALUE—Licensing Acts.***See* LICENSING ACTS.**MORA—Trustees, Liability of—Breach of trust—Contributory negligence—Right of pursuers to represent beneficiaries—Rate of interest.***See* SCOTTISH LAW.**MORTGAGE.**

*Clog on Equity of Redemption.* *See* below, *Redemption.*

*Conveyance, col.* 408.*Corporation Duty.* *See* REVENUE.

*Debentures.* *See* COMPANY—Debentures, and below, *Priority and Redemption.*

*Equity of Redemption.* *See* below, *Redemption.*

*Foreclosure, col.* 409.*Insurance.* *See* INSURANCE.*Lease.* *See* SET-OFF.

*Limitations, Statutes of.* *See* LIMITATIONS, STATUTES OF.

*Priority, col.* 411.*Receiver, col.* 413.*Redemption, col.* 413.*Sale.* *See* CANADA—Alberta.*Transfer, col.* 415.*Trustee.* *See* TRUSTEE.**Clog on Equity of Redemption.***See* below, *Redemption.***Conveyance.**

*Conveyance of portion of mortgaged lands "free from incumbrances"—Right of indemnity—Notice—Indemnifying lands mortgaged without notice—Right of contribution.*

If the owner of lands A and B, on which a charge exists, conveys lands A for value, and gives a covenant that the lands are "free from incumbrances," the purchaser is entitled to throw the charge on lands B, so long as lands B remain in the hands of the mortgagor or, of volunteers under him, but the equity ceases on a conveyance of lands B to a purchaser for value without notice.

The owner of lands A and B, subject to an annuity and a mortgage, conveyed lands A for value with a covenant that the lands were free from incumbrances. He subsequently mortgaged lands B to a mortgagee without notice of the conveyance:—

*Held*, that the mortgagee of lands B was entitled to make lands A contribute rateably with lands B, towards the payment of the superior charges. *OCEAN ACCIDENT AND GUARANTEE CORPORATION, LD., AND HEWITT v. COLLUM* - *Ross J. (Ir.)* [1913] 1 I. R. 337

**MORTGAGE—continued.****Corporation Duty.**

- Fund for redemption of debenture stock issued by corporation—Liability of income of fund to duty.

See **REVENUE—Corporation Duty.**

**Debentures.**

See **COMPANY—Debentures**, and below, **Priority and Redemption.**

**Equity of Redemption.**

See below, **Redemption.**

**Foreclosure.**

*Licence by mortgagees to work peat—Jurisdiction of Court to sanction—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 25, sub-s. 2.*

Mortgagees of land, which was in the possession of a receiver appointed by the Court in foreclosure proceedings, applied to the Court before any foreclosure order had been made to sanction an exclusive licence for a term of years, and at a premium and royalties, to work deposits of peat on the mortgaged land:—

*Held*, that the Court had no power to sanction the licence.

*Quære*, whether s. 48 of the Chancery Amendment Act, 1852, s. 25 of the Conveyancing Act, 1881, s. 13 of the Law of Property Amendment Act, 1859, s. 2 of the Confirmation of Sales Act, 1862, and s. 44 of the Trustee Act, 1893 (as amended by s. 3 of the Trustee Act, 1893, Amendment Act, 1894), raise the necessary implication that the sales of minerals apart from the land and other sales therein referred to could not, apart from those provisions, have been ordered by the Court in proceedings for foreclosure or sale. **STAMFORD, SPALDING AND BOSTON BANKING CO. v. KEEBLE**—**Sargant J.** [1913] 2 Ch. 96; 82 L. J. (Ch.) 388; 109 L. T. 310

*Parties—Mortgagor and mortgagee—First mortgage of one share—Second mortgage of three shares by three co-mortgagors—Right of indemnity between themselves—Foreclosure of first mortgage—Co-mortgagors under second mortgage not made parties—Effect of foreclosure.*

A co-mortgagor, liable as between himself and the other co-mortgagors to contribute a proportion only of the total debt and entitled to indemnity for any excess out of the shares of his co-mortgagors, is a necessary party to proceedings by a prior mortgagee to foreclose the share of one of his co-mortgagors.

*Stokes v. Clendon* (1790) 3 Swans. 150, n., followed.

On an event which happened in 1912 John, or the persons claiming under him, became entitled to 20,000*l.* part of, and John, William, and Walter, or the persons claiming under them respectively, became entitled in equal third shares to the residue of a fund in Court representing the residuary estate of a testator who died in 1860. In 1881 William mortgaged his share to a first mortgagee. In 1882 John, William, and Walter joined in a mortgage to the

**MORTGAGE (Foreclosure)—continued.**

trustees of an insurance society whereby, in consideration of money advanced in part to John and in part by John's direction to William and Walter, John covenanted within six months after the happening of the said event to pay to the society the sum of 17,876*l.* with interest computed from the happening of the said event, and John assigned his 20,000*l.* and each of the three mortgagors assigned his one third share to the trustees of the society, subject as to William's share to the prior mortgage of 1881, and subject as to all the premises to redemption on payment by the three mortgagors, or any of them, within six months after the happening of the said event, of the said sum of 17,876*l.* with interest; and it was thereby agreed that, as between the three mortgagors and the respective premises mortgaged by them respectively, John and the premises mortgaged by him should be primarily liable for 13,407*l.*, William and the premises mortgaged by him for 3129*l.*, and Walter and the premises mortgaged by him for 1340*l.*, and that each of them would accordingly contribute in those proportions to the payment of the total sum of 17,876*l.* and would indemnify the others against the payment of the proportion for which he was to be primarily liable, but this provision was not to affect the mortgages or preclude them from enforcing their security in such order as they thought fit. In 1882 the first mortgagees brought a foreclosure action against William and the trustees of the society and obtained a foreclosure order absolute. John and Walter were not parties to these proceedings:—

*Held*, that John and Walter were necessary parties to the foreclosure proceedings and were therefore unaffected by the foreclosure; and that as against John and Walter, or persons claiming under them, William's share must be applied, first, in payment of the amount due under the first mortgage, and secondly in making good its due contribution to the mortgage to the trustees of the society.

*Held*, also, that as against William, or persons claiming under him, the foreclosure remained absolute, and that the balance of his share after making the payments aforesaid belonged therefore to the first mortgagee or persons claiming under him. **GEE v. LIDDELL**—**Warrington J.** [1913] 2 Ch. 62; 82 L. J. (Ch.) 370; 108 L. T. 913; [1913] W. N. 136

**Insurance.**

- Mortgage owned by a company—Condition—Policy—Insured company in liquidation—Power of liquidator to assign.  
See **INSURANCE—Mortgage.**

**Lease.**

- Action by mortgagee for rent—Right of tenant to set off damages claimed from lessor.  
See **SET-OFF.**

**Limitations, Statutes of.**

- Mortgage—Real estate—Trust for sale—Proceeds of sale.  
See **LIMITATIONS, STATUTES OF.**

**MORTGAGE—continued.****Priority.**

*Debenture—Construction—Floating charge—Company restrained from creating further charge in priority to first debentures—After-acquired property—Specific mortgage subject to provisions of first security.*

By a debenture stock trust deed a co. gave a specific and a floating charge reserving power to deal with its assets but not to create any further charge over its property generally to rank *pari passu* with or in priority to or otherwise than subject or in subordination to the security thereby created. After the date of this deed the co. purchased freeholds. By a subsequent debenture stock trust deed the co. granted to trustees and their heirs certain freeholds, including the after-acquired property, by way of mortgage, upon the trusts thereafter mentioned, subject to the provisions of the first deed. The second deed also contained a general charge on all the co.'s assets subject to the first issue. The security constituted by the first deed was now crystallized:—

*Held*, affirming the decision of Parker J., that the security of the debenture stock holders under the second deed was postponed to that of the stockholders secured by the first deed. *In re ROBERT STEPHENSON & Co., LD. POOLE v. THE Co.* - - - C. A. [1913] 2 Ch. 201

*Equitable charge by deposit—Subsequent legal mortgage to another incumbrancer subject to prior charge—No notice to first mortgagee—First mortgage subsequently paid off—Title deeds handed to mortgagor—Title deeds then pledged to secure mortgagor's banking account—Priority.*

The owner of leasehold premises charged them with the payment of certain moneys to the G. and M. Bank and deposited the lease as security. He then mortgaged the premises by sub-demise expressly subject to the bank's charge. The legal mortgagee did not give the bank notice of his mortgage. The mortgagor subsequently, without the knowledge of the legal mortgagee, paid off the G. and M. Bank, obtained the lease from them, and deposited it with the defendant bank, who had no knowledge of the legal mortgage, to secure moneys advanced by them. In an action by the executors of the legal mortgagee to establish their priority over the defendant bank:—

*Held*, that the legal mortgagee had not been guilty of any misconduct, negligence, or want of caution for which he could be held directly or indirectly responsible; and that nothing had happened to take away or affect his original priority. *GRIERSON v. NATIONAL PROVINCIAL BANK OF ENGLAND, LD.* - - - Joyce J.

[1913] 2 Ch. 18; [1913] W. N. 136;  
108 L. T. 632; 29 T. L. R. 501;  
57 S. J. 517

*Merger—Reconveyance and new mortgage without notice of intermediate charge—Common mistake.*

Appeal from a decision of the C. A., *Manks v. Whiteley* [1912] 1 Ch. 735, reversing the decision of Parker J. [1911] 2 Ch. 445.

On April 4, 1900, Ogden mortgaged a farm in Yorkshire to Ackroyd to secure 300*l*.

**MORTGAGE (Priority)—continued.**

On Oct. 16, 1901, Ogden mortgaged the farm to Manks, whose executors were the respondents, as a collateral security.

Both these mortgages were duly registered in the Yorkshire Registry.

In 1907 Ogden, being unable to pay Ackroyd, who was pressing for repayment, offered to sell the farm to his daughter, the appellant Mrs. Whiteley, for 450*l*. On July 12 Mrs. Whiteley consulted a solicitor, Walshaw, and told him that she wanted to find some one who would advance the 300*l*. due to Ackroyd and that she would pay the balance of the purchase-money. Walshaw introduced the appellant Farrar, who agreed to advance 300*l*. on a first mortgage of the farm, and some time in July handed that sum to Walshaw, who paid it to Ackroyd and got from him the deeds. No one was aware of Manks' mortgage except Ogden, who did not disclose it. Walshaw, who acted for all parties except Ackroyd, framed the necessary deeds in the belief that Ogden had a clear title to the equity of redemption.

By the first deed, dated Aug. 16, 1907, Ackroyd, in consideration of the repayment of the principal and interest due under his mortgage, conveyed the farm to Ogden in fee simple. By the second deed of the same date, which recited that Ogden was seised in fee simple free from incumbrances, Ogden, in consideration of 450*l*. paid to him by Mrs. Whiteley, conveyed the property to her. By the third deed, dated the following day, which recited that Mrs. Whiteley was seised in fee simple free from incumbrances, Mrs. Whiteley mortgaged the property to Farrar to secure 300*l*. All these deeds were registered on the same day in the Yorkshire Registry.

In 1910 Manks brought an action against Mrs. Whiteley, Ogden, and Farrar, for a declaration that, on the execution of the reconveyance to Ogden of Aug. 16, 1907, his mortgage of Oct. 16, 1901, became a first charge on the property.

Parker J. held that in the circumstances the reconveyance did not operate as a merger of Ackroyd's mortgage and dismissed the action.

The C. A. *held* that there was a merger of Ackroyd's mortgage on the reconveyance to Ogden, and that Manks was entitled to priority.

The H. L. reversed the decision of the C. A.

Viscount Haldane L.C. said that the effect of the payment by Walshaw of the 300*l*. to Ackroyd on the terms of getting the deeds was to make the latter a trustee for Farrar as transferee in equity of the mortgage, and Walshaw, if he had known of Manks' incumbrance, would have so framed the deeds as to keep alive the equitable transfer of Ackroyd's mortgage to Farrar. His Lordship inferred from the facts that the parties had come to a definite agreement under which Walshaw was to frame the deeds so that Farrar should have a first mortgage, and that Walshaw failed to carry out that agreement owing to a mistaken belief that the property was subject to no further incumbrances. He therefore thought that the appellants would have been entitled to invoke the assistance of a Court of Equity in rectifying the deeds on the ground of common mistake.

**MORTGAGE (Priority)—continued.**

Neither Ogden, whose misrepresentation had given rise to the difficulty, nor any one claiming through him could have insisted on a title arising from the mistaken form of the deeds. Manks claimed through Ogden and had no better title, and for the purposes of a question with Farrar his title was that of a volunteer who had given no consideration for the new priority he claimed. That title therefore remained subject to Ackroyd's prior mortgage, which equity would not treat as displaced by the act of Ogden. On those grounds alone the appellants were entitled to succeed. The Yorkshire Registries Acts, having regard to s. 15 of the Act of 1884, did not assist the respondents.

*Toulmin v. Steere* (1817) 3 Mer. 210, discussed. **WHITELEY AND ANOTHER v. DELANEY AND OTHERS** - **H. L. (E.)** [1913] **W. N. 368**

*Mortgage to bank to secure current account—Subsequent mortgage—Notice—Appropriation of payments—Rule in Clayton's Case.*

**DEELEY v. LLOYDS BANK, LD.** - **H. L. (E.)** [1912] **A. C. 756**; **81 L. J. (Ch.) 697**; **107 L. T. 465**; [1912] **W. N. 223**; **29 T. L. R. 1**; **56 S. J. 734**

**Receiver.**

*Appointment in second mortgagee's action—First mortgagees not parties—Claim by first mortgagees for possession—Notice to receiver and tenants—Application to Court—Rents collected by receiver between notice and application.*

*In re METROPOLITAN AMALGAMATED ESTATES, LD., FAIRWEATHER v. METROPOLITAN AMALGAMATED ESTATES, LD. YORKSHIRE INSURANCE CO., LD. v. METROPOLITAN AMALGAMATED ESTATES, LD.* - **Swinfen Eady J.** [1912] **2 Ch. 497**; **81 L. J. (Ch.) 745**; **107 L. T. 545**; [1912] **W. N. 219**

**Redemption.**

*Floating charge—Clog on equity—Collateral bargain—Option of pre-emption.*

Appeal from an order of the C. A., **29 T. L. R. 393**.

The appellants were wool brokers and the respondents were a co. carrying on the business of preserving meat.

By an agreement dated Aug. 24, 1910, the appellants agreed to lend the respondents 10,000*l.*, repayable on demand with interest at 6 per cent. To secure the loan the respondents by the agreement charged their undertaking and property both present and future with the payment of the principal sum and interest to the intent that the charge should be a floating security. By the agreement the respondents were not for five years from the date of the agreement to sell sheepskins to any one but the appellants, so long as the latter were willing to buy at a price equal to the best price (c.i.f. London) offered by any one else, and the respondents were to pay to the appellants a commission of 1 per cent. on the sale price of all sheepskins sold by the respondents to any one else. The respondents paid off the loan, and claimed that such payment had put an end to the appellants' option of pre-emption. Thereupon the appel-

**MORTGAGE (Redemption)—continued.**

lants moved for an interlocutory injunction to restrain the respondents from selling sheepskins to any one else than the appellants.

Swinfen Eady J. held that the clause conferring the option was void as a clog upon the equity of redemption, and his decision was affirmed by the C. A.

The H. L. reversed the decision of the C. A., and declared that the appellants were entitled to an injunction. The stipulation in question was a contemporaneous but collateral contract, in substance independent of the security, and there was no reason either in morals or in equity which ought to prevent the intention of the parties from being left to have its effect.

*Noakes & Co., Ltd. v. Rice* [1902] **A. C. 24**; *Bradley v. Carritt* [1903] **A. C. 253**, discussed and distinguished. **G. & C. KREGLINGER v. NEW PATAGONIA MEAT AND COLD STORAGE CO., LD.** - **H. L. (E.)** [1913] **W. N. 336**; **30 T. L. R. 114**; **58 S. J. 97**

*Mortgage of land—Transfer of stock as collateral security—Authority to pledge stock—Fraudulent pledge of stock to bank to secure advances to mortgagee—Subsequent equitable sub-mortgagee of land to bank—Mortgagor's right to redeem land as against bank.*

Appeal from a decision of Warrington J.

The plt. had contracted to purchase certain land on the security of which he desired to borrow 4000*l.* He accordingly executed a mortgage of the property to his solicitor C., who obtained the money from the deft. bank. At the same time the plt. transferred to C. a sum of 3000*l.* debenture stock by way of collateral security. C. then fraudulently induced the plt. to execute a memorandum giving a security on the stock in favour of the deft. bank, not merely as a security for the 4000*l.*, but for all the advances of the bank to C., and the stock was transferred into the names of trustees for the bank. C. afterwards sub-mortgaged the land to the bank, by way of equitable deposit of the title deeds, to secure his general indebtedness to the bank. The bank subsequently obtained from C. a written memorandum of deposit of which they gave notice to the plt., and afterwards obtained a legal transfer from C., who shortly afterwards was adjudicated bankrupt, being indebted to the bank in a sum far exceeding 4000*l.*

The plt. sought to redeem the mortgage on payment of the balance of the 4000*l.* over and above the value of the stock.

The bank contended that he could only redeem on payment of the full 4000*l.*

Warrington J. gave judgment for the plt., and the bank appealed.

The C. A. dismissed the appeal. The bank, being ignorant of C.'s fraud, were entitled as against the plt. to apply the stock towards the general indebtedness of C., but as regards the mortgage of the land they were in no better position than their assignor, who could not have resisted the plt.'s right to redeem on payment of 4000*l.* less the value of the stock. **DE LISLE v. UNION BANK OF SCOTLAND** - **C. A.** [1913] **W. N. 317**; [1914] **1 Ch. 22**; **30 T. L. R. 72**; **58 S. J. 81**

**MORTGAGE (Redemption)**—*continued.*

- Redemption—Order declaring priorities and for foreclosure or sale by Court of Appeal—Appeal to House of Lords—Enlargement of time for redemption—Application to Court of first instance.  
*See* **APPEAL—Court of Appeal.**

**Sale.**

- Chattel mortgages—Damages for negligent sales of horses—Law of Canada.  
*See* **CANADA—Alberta.**

**Transfer.**

*Transferee for value without notice—Negligence of mortgagor—Fraud of mortgagee—Equities as between mortgagor and transferee—Two innocent parties—Which must suffer from fraud of third party?—Estoppel.*

A., a solicitor, in the year 1897, mortgaged certain property to P., to secure a sum of 600*l.* In the year 1905 P. advanced a further sum of 317*l.* to A., and a new mortgage was executed, for the sum of 917*l.*, of the lands subject to the mortgage of 1897 and additional lands. This mortgage contained no reference to the mortgage of 1897, nor was the deed effecting that mortgage handed over to A., it being alleged by P. to have been lost. In 1907 P. transferred the 1905 mortgage to himself and H., as joint trustees of a trust fund, by way of sub-mortgage to secure a sum of 1500*l.*, the circumstances being such as to constitute P. and H. transferees for value. The principal sum of 917*l.* was then due on foot of the mortgage of 1905, and H. had no notice of the mortgage of 1897. A. acted as P.'s solicitor in connection with the transfer, and approved of the transfer deed. In 1908 P. transferred the mortgage of 1897 to a bank, which subsequently realized the amount. The sub-mortgage of 1907 was afterwards transferred to H. and M., as the then trustees of the trust fund, and they instituted the present proceedings for a sale of the lands comprised in the mortgage of 1905, alleging that the sum of 917*l.* was due on foot of such mortgage. A. claimed to be entitled to credit in respect of the moneys realized on foot of the mortgage of 1897:—

*Held*, that in consequence of A. having left the mortgage of 1897 outstanding in the hands of P., it was not open to A. to say that the whole amount secured by the mortgage of 1905 was not due. *In re* **AMBROSE'S ESTATE**

**Ross J. [1913] 1 I. R. 506**

**Trustee.**

- Appropriation of security by defaulting trustee to meet breach of trust—Declaration of trust—Equitable mortgage.  
*See* **TRUSTEE.**
- Investment—Breach of trust—"Two-thirds" limit—Duty of valuer.  
*See* **TRUSTEE.**

**MOTION**—Abandoned—Costs—Notice.

*See* **COSTS—Motion.**

**MOTOR BOAT**—"Passenger" steamer—"Vessel used in navigation."

*See* **SHIPPING—Passenger Steamer.**

**MOTOR CARS**—Horse-power of motor cars—*Regulations, dated November 22, 1912, made by the Treasury for the purpose of s. 86, sub-s. 2, of the Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8).* **11 L. G. R. Orders, p. 5.**

*Motor Cars (Use and Construction) Order, 1904: Amending Regulations. L. G. B. Order, April 19, 1913* **11 L. G. R. Orders, 139**

- Heavy motor car—Bridge—Notice prohibiting passage of heavy motor cars over bridge.  
*See* **BRIDGE.**

*Lamp—Motor Cars (Use and Construction) Order, 1904, art. II., condition 7—Exemption—Bicycle—Motor bicycle.*

*Case stated by justices.*

Art. II. of the Motor Cars (Use and Construction) Order, 1904 (Statutory Rules and Orders, 1904, No. 315), provides (condition 7) that the lamp to be carried attached to a motor car on a highway shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a red light visible within a reasonable distance in the reverse direction to that towards which the motor car is travelling. The art. contains a proviso exempting from its provisions any bicycle, tricycle, or other machine to which s. 85 of the Local Government Act, 1888, applies.

The appellant was charged with having ridden a motor bicycle at 10 P.M. on Mar. 24 without having attached thereto a lamp which would exhibit a red light in the direction contrary to that towards which the motor bicycle was proceeding.

It was contended for the appellant that the motor bicycle, although a motor car as defined by the above order, was exempted from the provision of condition 7 by the proviso.

The justices held that the motor bicycle was not "a bicycle . . . to which s. 85 of the Local Government Act, 1888, applies," and that it was obliged to exhibit a red light as provided by condition 7, and they therefore convicted the appellant.

The Div. Ct. *held* that the decision of the justices was right. Appeal dismissed. **WEBSTER v. TERRY** - Div. Ct. [1913] **W. N. 290** ; [1914] **1 K. B. 51** ; **30 T. L. R. 23**

*Offence—Owner—Refusal to give information as to driver—Conviction—Omission to specify offence committed by driver—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 1, sub-s. 3.*

In the conviction of the owner of a motor car under sub-s. 3 of s. 1 of the Motor Car Act, 1903, for refusing to give information which may lead to the identification of the driver, it is sufficient to state generally that the driver had committed an offence under sub-s. 1 without more particularly specifying that offence. *Ex parte* **BEECHAM** - Div. Ct. [1913] **3 K. B. 45** ; **82 L. J. (K. B.) 905** ; **109 L. T. 442** ; **29 T. L. R. 586**

*Use without lamp burning so as to illuminate identification plate offence at night—Defence open to defendant—Motor Car Act, 1903 (3 Edw. 7,*

**MOTOR CARS—continued.**

c. 36) s. 2, sub-s. 4—*Motor Car (Registration and Licensing) Order*, 1903, art. 11.

PRINTZ v. SEWELL - Div. Ct. [1912] 2 K. B. 511; 81 L. J. (K. B.) 905; 10 L. G. R. 665; 23 Cox, C. C. 23; 106 L. T. 880; 76 J. P. 295; 28 T. L. R. 396

**MUNICIPAL CORPORATION.**

See CORPORATION.

**MURDER**—Manslaughter or—Provocation by words.

See CRIMINAL LAW—Murder.

**NAME**—Trade mark—Registration—Application to register surname—Passing-off—Action to restrain—Use by defendant of his own name.

See TRADE MARK.

**NATIONAL DEBT ACT, 1870.**

See REVENUE—Income Tax—Dividends.

**NATIONAL INSURANCE.**

See INSURANCE (NATIONAL).

**NATIONAL INSURANCE ACT, 1911.**

See INSURANCE (NATIONAL).

**NATURAL JUSTICE**—Proceedings contrary to—Foreign judgment—Action—Defence of fraud—Exclusion of evidence of fraud.

See FOREIGN JUDGMENT.

**NAVIGATION**—"Passenger steamer"—"Vessel used in navigation."

See SHIPPING—Passenger Steamer.

**NECESSARIES**—Infant—Contract—Benefit—Consideration received—Executory contract—Liability.

See INFANT—Contract.

—Infant—Maintenance—Reversion in fee to real estate—Loan—Charge—Security—Judgment—Land charges.

See INFANT—Maintenance.

**NEGLIGENCE.**

Agent. See SCOTTISH LAW.

Carrier, col. 428.

Contributory Negligence. See SCOTTISH LAW—Trust.

Dangerous Animal, col. 418.

Dangerous Article, col. 419.

Dangerous Work on Building adjoining Highway, col. 419.

Flooding. See LOCAL GOVERNMENT—Drainage.

Highway, col. 420.

Joint Tortfeasors, col. 420.

Leave and Licence. See below, Unfenced Land.

Mulicious Act of Third Person, col. 420.

Master and Servant. See MASTER AND SERVANT.

**NEGLIGENCE—continued.**

Motor Car, col. 421.

Onus of Proof, col. 421.

Railway Company. See above, Onus of Proof.

Sale. See CANADA—Alberta.

Schoolmaster, col. 423.

Shipping. See SHIPPING.

Tramway Company. See above, Onus of Proof.

Unfenced Land, col. 423.

Workmen's Compensation. See WORKMEN'S COMPENSATION.

**Agent.**

—Agent and client—Breach of duty—Solicitor and bank agent.

See SCOTTISH LAW.

**Carrier.**

Lighterman—Contract—Damage coverable by insurance—Exemption from responsibility—Liability for negligence.

The deft. contracted with the plts. that he would lighter certain goods from the import ship to a wharf on the Thames. The goods, when on the deft.'s barge, were damaged, and the plt.'s brought an action against the deft. alleging negligence of the deft.'s servants. The deft. denied negligence and relied on the following notice:—"The rates charged by me for lighterage are for conveyance only. I will not be responsible for any damage to goods, however caused, which can be covered by insurance. Merchants are advised to see that their policies cover risk of craft and are made without recourse to lighterman":—

Held, on the facts, that the damage was not caused by negligence, but *sembl*e on the authority of *Price v. Union Lighterage Co.* [1903] 1 K. B. 750, that the above notice was not sufficiently explicit to protect the deft. from liability for loss by negligence. JOSEPH TRAVERS & SONS, LD. v. COOPER - Pickford J. 30 T. L. R. 93

**Contributory Negligence.**

—Trustees—Breach of trust—Mora—Rate of interest.

See SCOTTISH LAW—Trust.

**Dangerous Animal.**

Breach of duty—Horse and carriage hired by husband—Vicious horse—Injury to wife—Dangerous animal—Knowledge of owner of horse—Means of knowledge—Control of carriage—Acceptance of wife as passenger.

The male plt. hired from the deft., who was a livery stable keeper, a landau with a horse and driver for the purpose of taking a drive. His wife accompanied him in the carriage. The horse shewed considerable signs of restiveness when meeting motor cars, and when passing a traction engine shied and became unmanageable, and the carriage was upset and both husband and wife were injured. In an action by the husband and wife to recover damages for the injuries the

**NEGLIGENCE (Dangerous Animal)**—*continued.*  
 jury found that the deft. ought to have known, if he had used proper care, that the horse was unsafe to be sent out with the carriage, but that the driver was not negligent. The deft. upon these findings, while admitting liability to the husband, contended that he was not liable to the wife :—

*Held* that, as the deft. ought to have known of the vicious propensity of the horse, he was in the same position as if he had known, and that therefore it was his duty to the wife, who he must have contemplated would use the carriage, to warn her of the dangerous character of the horse; that this duty arose independently of contract; and that therefore the deft. was liable to the wife.

*Held*, also, that the deft. was liable to the wife upon the ground that, as he kept control of the carriage and accepted her as a passenger therein, he was under a duty to use reasonable care to carry her safely and for that purpose to provide a proper horse. *WHITE v. STEADMAN* - Lush J.

[1913] 3 K. B. 340; 82 L. J. (K. B.) 846;  
 109 L. T. 249; [1913] W. N. 172;  
 29 T. L. R. 563

#### Dangerous Article.

*Sale by manufacturer to shopkeeper—Purchase by plaintiff from shopkeeper—Defect unknown to manufacturer—Means of knowledge—Injury to plaintiff—Liability of manufacturer.*

The defts. manufactured ginger beer which they placed in bottles bought from another firm; they sold the bottled ginger beer to a shopkeeper from whom the plt. bought one bottle; owing to a defect in the bottle it burst when the plt. was opening it and injured him; the defts. did not know of the defect, but could have discovered it by the exercise of reasonable care :—

*Held*, that the defts. were not liable, inasmuch as they did not know of the defect, although they could have discovered it by the exercise of reasonable care.

*White v. Steadman* [1913] 3 K. B. 340, distinguished. *BATES v. BATEY & CO., LD.*

*Horridge J.* [1913] 3 K. B. 351; 82 L. J. (K. B.) 963; 108 L. T. 1036; [1913] W. N. 213; 29 T. L. R. 616

#### Dangerous Work on Building adjoining Highway.

*Personal injuries—Employment of contractor—Liability of principal—Absence of precautions against danger to public.*

By an agreement between a ry. co. and a firm of contractors the latter were to build a superstructure over the ry. co.'s station, and were to have a 99 years' lease of same. The new building, which adjoined a public street, required scaffolding and hoardings, which the contractors were to erect in such a way as should be reasonably approved by the ry. co. A gantry was also necessary by means of which building materials might be raised to the top of the existing building, and this gantry could only be erected in a particular manner as provided by the agreement. During the progress of the building operations the plt., while walking on the pavement out-

**NEGLIGENCE (Dangerous Work on Building adjoining Highway)**—*continued.*

side the station, was injured by some timber falling on her from the building, and in respect of her injuries she sued both the ry. co. and the contractors. Neither of the defts. called any evidence as to how the timber fell. The jury found that the accident was caused by negligence, as there was not sufficient protection to the public on the footpath :—

*Held*, that there was a duty on the ry. co. to safeguard the public during the building operations on their premises adjoining the street, and that they did not fulfil that duty by delegating to it an independent contractor; that the contractors were negligent in that, having the management of the building operations, timber fell from the building and they offered no explanation of its falling; and that there must be judgment against both defts. *HURLSTONE v. LONDON ELECTRIC RY. CO. AND ANOTHER* - Scrutton J. 29 T. L. R. 514

#### Flooding.

See LOCAL GOVERNMENT—Drainage.

#### Highway.

*Sheep—No light at night.*

There is no rule of law that to drive sheep along the highway at night without a light is a negligent act. *CATCHPOLE v. MINSTER*

Div. Ct. 30 T. L. R. 111

#### Joint Tortfeasors.

*Indemnity by one of joint tortfeasors.*

A contractor was employed by a district council to do certain work which involved an excavation by the side of a road. A person having fallen into this excavation and sustained injuries from which he died, his widow and daughter sued the contractor and district council under Lord Campbell's Act claiming damages. The jury returned a verdict for the plt. The district council thereupon claimed that under the terms of the contract between them and the contractor they were entitled to an indemnity from him :—

*Held*, that it was not against public policy that the district council should take an indemnity from the contractor and be allowed to enforce it against him, and therefore a declaration should be made that they were entitled to such indemnity, which should include the costs of the action. *NEWCOMBE v. YEWEN AND THE CROYDON R. D. C.*

Darling J. 29 T. L. R. 299

#### Leave and Licence.

See below, Unfenced Land.

#### Malicious Act of Third Person.

*Proximate cause of damage—Reasonable precautions—Overflow of water from lavatory in upper floor—Appeal from Victoria.*

To sustain an action for negligence it must be shown that the negligence found by the jury is the proximate cause of the damage. Where the proximate cause is the malicious act of a third person against which precautions would

**NEGLIGENCE (Malicious Act of Third Person)**  
—continued.

have been inoperative, the deft. is not liable in the absence of a finding either that he instigated it or that he ought to have foreseen and provided against it.

In an action for damages to property located on the second floor of a building leased to the deft., through a continuous overflow of water from a lavatory basin on the top floor caused by the water tap having been turned on full and the waste-pipe plugged, the jury found that "this was the malicious act of some person":—

*Held*, (1.) that the deft. was not responsible, unless either he instigated the act or the jury had found that he ought reasonably to have prevented it; (2.) that his having on his premises a proper and reasonable supply of water was an ordinary and proper user of his house, and that although he was bound to exercise all reasonable care, he was not responsible for damage not due to his own default, whether caused by inevitable accident or the wrongful acts of third persons.

*Rylands v. Fletcher* (1868) L. R. 3 H. L. 330, distinguished. *RICKARDS v. LOTHIAN* - P. C. [1913] A. C. 263; 82 L. J. (P. C.) 42; 101 L. T. 225; 29 T. L. R. 281; 57 S. J. 288

**Master and Servant.**

See MASTER AND SERVANT.

**Motor Car.****Control of owner—Responsibility for damage.**

The deft. was the owner of a motor car which was being driven by his son. The deft. was not in the car, but his driver was sitting beside his son. A collision occurred between the deft.'s car and a car belonging to the plt. owing to the negligent driving of the deft.'s son. In an action for damage caused by the collision the deft. stated that he permitted his son to use the car, but never allowed him to go out without the driver:—

*Held*, that there was evidence that the deft. was responsible for his son's negligence. *REICH-ARDT v. SHARD* - Div. Ct. 30 T. L. R. 81

**Onus of Proof.**

*Defendants liable in the alternative — Nonsuit as against one defendant — New trial as against that defendant—Parties—R. S. C., Order XVI., r. 1—Accident to public coach—Onus of proof of soundness.*

A 'bus belonging to T. upset owing to a wheel being wrenched off by tramlines belonging to C. so that the plt., a passenger, was injured. In an action against T. and C. in the alternative the judge nonsuited the plt. as against T. and the jury found in favour of C., after evidence had been called by the plt. to prove that the 'bus was sound and that the accident was due to a defect in the tramline:—

*Held*, that there was some evidence of negligent driving, and that the onus lay on T. to prove that the 'bus was sound and that the attempt of the plt. to prove in the first trial that the 'bus was sound was no objection to granting him a new trial. *LILLY v. THOS. TRULLING, LD., AND LONDON C. C.* - C. A. 57 S. J. 59

**NEGLIGENCE (Onus of Proof)—continued.**

*Fatal accident—Action for damages—Death caused by fire burning down a lock-up in which deceased was confined—No proof of negligent act or omission.*

*MCKENZIE AND OTHERS v. CHILLIWACK CORPORATION* - P. C. [1912] A. C. 888; 82 L. J. (P. C.) 22

*Railway crossing road — Omission to give warning—Injury to foot passenger—Canada.*

A person passing from one side to the other of a street across which a ry. passed on the level was injured by an engine belonging to the ry. co. By the Canadian Railway Act, in the case of a train approaching a highway crossing on the level the duty is imposed of giving warning by whistling and the ringing of a bell. In an action to recover damages by the person who was injured the jury found that he had not taken sufficient precautions in crossing the track, and that the co.'s servants had not given warning of the approach of the engine:—

*Held*, that to make the ry. co. liable it must be shewn that the omission to whistle or give the other warning, or both combined, and not the folly and recklessness of the person injured, caused the accident. *GRAND TRUNK RY. CO. OF CANADA v. MCALPINE* - P. C. [1913] A. C. 838; 29 T. L. R. 679

*Railway platform—Fog—Insufficient lights—No adequate warning of danger to intending passengers.*

The plt. sued the deft. co. to recover damages for personal injuries sustained by her at one of their ry. stations. She intended travelling from that station. The night was very foggy, and the lamps on the platform did not shew through the fog. While walking along the platform the plt. fell on to the rails and was injured. Several other people had fallen off the platform earlier on the same evening. The jury found that the accident was due to the negligence of the defts.:—

*Held*, that the plt. was entitled to recover, as the circumstances imposed upon the defts. a duty to take all reasonable precautions to protect the plt. effectively from the dangers besetting all movement on the platform on the night in question, and that there was evidence which entitled the jury to find the defts. had failed to discharge the duty that rested upon them. *LONDON, TILBURY, AND SOUTHERN RY. v. PATERSON* - H. L. (E.) 29 T. L. R. 413

*Tramways—Extent of duty of tramway company to ensure safety of passengers—Injury from fall of trolley.*

The deft. co. were empowered to work a system of electric tramways and employed the overhead wire and trolley system. It had been found in practice impossible to prevent the wheel on the trolley arm sometimes leaving the overhead wire, and the trolley arm was liable then to become entangled in the overhead gear. To prevent a serious accident the head of the trolley arm was made detachable, but as it occasionally failed to detach itself, the whole arm was also made detachable at the socket when subjected to severe strain. Cases of the whole arm being detached were extremely rare. The



**NEGLIGENCE (Onus of Proof)**—*continued.*

plt. met with an accident while travelling outside one of the defts.' tramcars through the arm becoming detached and falling on him. In an action for damages for negligence the defts. called evidence to disprove certain alleged acts of negligence and proved that the tramcar was in perfect order and that the system in use was the best and most widely used overhead system. The jury found, however, for the plt. on the ground of negligence, giving as their reason that the defts. had used a detachable arm, knowing the risk, and did not take sufficient precautions to ensure the passengers' safety, but they said they could not specify what precautions ought to have been taken:—

*Held* by the C. A. (Farwell L.J. dissenting), that there must be judgment for the defts., because the jury had by their verdict, as explained by themselves, negatived all the alleged acts of negligence and had found that the defts. had successfully met the burden cast on them of proving a reason for the accident consistent with the performance by them of their contractual duty to safeguard the passengers by all practical care and skill. **NEWBERRY v. BRISTOL TRAMWAYS AND CARRIAGE CO. - C. A. 11 L. G. R. 69; 107 L. T. 801; 29 T. L. R. 177; 57 S. J. 172**

**Railway Company.**

*See above, Onus of Proof.*

**Sale.**

- Negligent sale by mortgagee.
- See CANADA—Alberta.*

**Schoolmaster.**

*Duty of schoolmaster to boys.*

*Per Darling J.:* The duty of a schoolmaster in relation to his pupils is that of a careful father. **SHEPHERD v. ESSEX C. C. AND ANOTHER - Darling J. 29 T. L. R. 303**

**Shipping.**

- Charterparty—Exceptions—Neglect to close discharge valve—Incurison of sea water—Damage to cargo.
- See SHIPPING—Charterparty.*
- Pilot—Limitation of pilot's liability.
- See SHIPPING—Pilot.*

**Tramway Company.**

*See above, Onus of Proof.*

**Unfenced Land.**

*Landowner—Leave and licence to enter—Children—Invitation—Allurement—Dangerous object—Injury—Liability.*

The defts. were owners of a plot of unfenced waste land from which old houses had been cleared. It did not adjoin any public highway, but was accessible by a path leading from the back of the house in which the plt., a child between two and three years old, lived with her parents. The public were allowed by the defts. to traverse the land, and children of all ages were in the habit of playing upon heaps of sand, stone, and other materials which from time to time were deposited there by the defts. The plt. went upon the land unaccompanied by any older

**NEGLIGENCE (Unfenced Land)**—*continued.*

person and was shortly afterwards found upon a heap of paving stones, one of which had fallen upon her hand and injured it. There was no evidence to shew how the accident happened. In an action for negligence the jury found that children played upon the land with the knowledge and permission of the defts.; that there was no invitation to the plt. to use the land unaccompanied; that the defts. ought to have known that there was a likelihood of children being injured by the stones; and that the defts. did not take reasonable care to prevent children being injured thereby. Upon these findings Scrutton J. held that the case came within *Cooke v. Midland Great Western Ry. of Ireland* [1909] A. C. 229, and gave judgment for the plt. with damages:—

*Held*, on appeal, that, there being neither allurement nor trap, nor invitation, nor dangerous object placed upon the land, the defts. were not liable.

*Cooke v. Midland Great Western Ry. of Ireland (supra)* considered and distinguished.

Decision of Scrutton J. reversed. **LATHAM v. R. JOHNSON & NEPHEW, LD. - C. A. [1913] 1 K. B. 398; 82 L. J. (K. B.) 258; 108 L. T. 4; 77 J. P. 137; [1912] W. N. 290; 29 T. L. R. 124; 57 S. J. 127**

*Safety of the public—Unfenced sandpit on private ground—Use of pit by children as playground—Hidden danger.*

In an action by a father for solatium for the death of his daughter, aged seven, the pursuer averred that the defenders were the owners of ground abutting on a public path and separated therefrom by a hedge in which there were gaps; that on the ground there was an unfenced sandpit 80 yards from the path; that children were in the habit of entering the ground and using the pit as a playground; that the defenders knew of this practice and "allowed" it; that the pursuer's child was killed by a fall of sand while playing in the pit; and that the defenders knew, before the accident happened, that the face of the sand was at a dangerous angle and liable to fall, but took no steps to have the danger removed or to exclude the children:—

*Held* that the pursuer's averments were relevant, and issue allowed.

*Devlin v. Jeffray's Trustees* (1902) 5 F. 130, and *Cummings v. Darnagail Coal Co., Ltd.* (1903) 5 F. 513, distinguished, on the ground that the dangerous state of the sandpit was not a danger that was manifest to a child of that age. **MACKENZIE v. FAIRFIELD SHIP-BUILDING AND ENGINEERING CO., LD.**

**¶ Ct. Sess. 1912 S. C. 213**

*Unfenced rubbish heap in field frequented by public—Safety of the public—Dangerous article—Injury to child—Liability of person using, but not owning the field.*

A father brought an action of damages against a burgh authority for the death of his daughter, under three years of age, who had received fatal injuries through her clothes becoming ignited at a fire burning upon a rubbish heap or "coup," where the burgh

**NEGLIGENCE (Unfenced Land)—continued.**

rubbish was deposited. He averred that this coup was situated in a grass field in the neighbourhood of his house and was not fenced off from the field, nor was the field sufficiently fenced to exclude the public, who in fact used it as a public park, and that children were in the habit of playing upon the coup, all of which was known to the defenders. He further averred that it was the practice of the defenders, or of those for whom they were responsible, to collect and burn inflammable material upon the coup, and that this practice had been followed by rag-pickers, with the acquiescence of the defenders. He alleged fault on the part of the defenders, in respect that they had failed to fence the coup or field or to take other precautions to exclude the public therefrom, and had failed, the coup being unfenced, to watch and properly extinguish fires which might be lighted thereon:—

*Held*, that those averments were irrelevant to found an issue against the defenders, in respect (1.) that it appeared therefrom that the defenders were not the owners of the field or coup, and had therefore neither the right nor the duty to fence them; and (2.) that the material which they put upon the ground was not dangerous in itself but only became so when ignited, and there was no averment that the defenders, or those for whom they were responsible, had kindled the fire in question.

*Lowery v. Walker* [1911] A. C. 10, distinguished. *JOHNSTONE v. LOCHGELLY MAGISTRATES* - - - Ct. Sess. 1913 S. C. 1078

**Workmen's Compensation.**

— Third party.

*See* WORKMEN'S COMPENSATION.

**NETS**—Collision clause of Lloyd's policy—Construction of clause—"Collision . . . with ship or vessel"—Collision with nets of fishing vessel.

*See* INSURANCE (MARINE).

**NEW SOUTH WALES.**

*See* AUSTRALIA.

**NEW ZEALAND—Land—Native titles to land—New Zealand Settlement Act, 1863 (27 Vict. No. 8)—Order in Council.**

By the New Zealand Settlement Act, 1863, s. 3, the Governor in Council was empowered to "set apart" within any district, declared under s. 2 to be a district within that Act, "eligible sites for settlements for colonization." Sect. 4 provided: "for the purposes of such settlements the Governor in Council may from time to time reserve or take any land within such district and such land shall be deemed to be Crown land, freed and discharged from all title, interest or claim of any person whomsoever." By an Order in Council dated Sept. 2, 1865, made under the above Act, it was declared that certain lands should be a district within the above Act and that the said lands were required for the purposes of the Act, and were subject to the provisions thereof; and it ordered that such lands should be "set apart and reserved as sites for settlements for colonization agreeably to the provisions of

**NEW ZEALAND—continued.**

the Act." The Order further declared, "no land of any loyal inhabitant within the district, whether held by native custom or Crown grant, will be taken, except so much as may be absolutely necessary for the security of the country, compensation being given for all lands so taken":—

*Held*, that the above Order in Council did not extinguish the native or other title of any loyal inhabitant of the district.

*Te Teira Te Puea v. Te Roera Tareha* [1902] A. C. 56, distinguished. *MANU KAPUA v. PARA HAIMONA* - - - P. C. [1913] A. C. 761; 108 L. T. 977

**NEWFOUNDLAND—Telegraph cables—Taxation of telegraph cables landed in the Colony—Telegraph and Telephone Companies Act, 1905 (5 Edw. 7, c. 7), s. 1.**

*COMMERCIAL CABLE CO. v. ATT.-GEN. OF NEWFOUNDLAND* - - - P. C. [1912] A. C. 820; 82 L. J. (P. C.) 5; 107 L. T. 101; 28 T. L. R. 527

**NEWSPAPER**—Libel—Innuendo—Trade publication—List of decrees in absence—Erroneous entry—Imputation of insolvency.  
*See* DEFAMATION

**NEXT FRIEND**—Discovery—Person of unsound mind—Affidavit of documents.  
*See* DISCOVERY.

**NON-DISCLOSURE**—Bank guarantee—Duty of bank to guarantor—Non-disclosure by bank to guarantor—of suspicions concerning conduct of debtor—Whether guarantor discharged.  
*See* PRINCIPAL AND SURETY.

**NON-PAROCIAL REGISTERS ACT, 1840.**  
*See* EVIDENCE—Public Document.

**NONSUIT**—Appeal from county court—Point taken that county court judge ought to have nonsuited plaintiff—Consideration of all evidence given in county court.  
*See* COUNTY COURT—Appeal.

**NORTH-WEST PROVINCES CONSOLIDATED ORDINANCES, 1898.**  
*See* CANADA—Alberta.

**NOTICE**—Assignment—Debt—Sufficiency of notice to debtor.  
*See* CHOSE IN ACTION.

— Bankruptcy.  
*See* BANKRUPTCY—Notice.

— Building in street.  
*See* LOCAL GOVERNMENT—Streets.

— Coal Mines (Minimum Wage) Act, 1912—Rule requiring notice to official—  
*See* MINES—Coal Mines.

— Company—Reconstruction—Notice of dissent—Form of notice.  
*See* COMPANY—WINDING-UP—Reconstruction.

**NOTICE—continued.**

- Habitual criminal—Notice of intention to insert charge in indictment of being habitual criminal—Sufficiency of notice. See **CRIMINAL LAW—Habitual Criminal.**
- Mortgages—Priority—Title deeds—No notice to first mortgagee. See **MORTGAGE—Priority.**
- To quit—Agricultural holdings—Market garden—"Good and sufficient cause"—Demand of increased rent. See **LANDLORD AND TENANT.**
- Workmen's compensation. See **WORKMEN'S COMPENSATION.**

**NUISANCES.**

*Common.* See **MANOR.**

*Noise, col.* 427.

*Smell, col.* 428.

*Smoke, col.* 428.

*Streets, col.* 428.

**Common.**

- Rights of—Turbary—Estovers—Abatement—Excessive trespass—Cutting down trees—Injunction—Damages. See **MANOR.**

**Noise.**

*Holding of annual feast—Noise caused by steam organs and amusements—Depreciation of value of property—Injunction.*

The plts. in this action were the trustees of the Bedford Estate, Leeds, and they sought an injunction against the Leeds Corporation to restrain them from holding a certain annual feast known as Woodhouse Feast, which appeared to have been held on or in the neighbourhood of Woodhouse Moor for the past 200 years, on the ground that the noise caused by the feast constituted a nuisance. They complained that their property, which adjoined the moor, had depreciated in value owing to the noise caused by switchbacks, shooting galleries, roundabouts, steam organs, &c., brought on to the moor. For the debts. it was contended that the feast did not constitute a nuisance. It appeared in evidence that from 1908 to 1911 the debts. leased the conduct of this feast to a contractor, and that during that time protests were lodged by the plts. against the nuisance thereby occasioned, but it was subsequently agreed that the plts. should accept compensation in respect of the feasts from 1908 to 1911 without prejudice to their rights thereafter. In the year 1912 the corporation wrote to the plts. threatening to again hold the feast on Woodhouse Moor; whereupon a writ was issued by the plts. to restrain them by injunction:—

*Held*, on the facts, that the feasts from 1908 to 1911 constituted a nuisance and that there must be a declaration to that effect, and that the corporation must pay the costs of the action. That with regard to the year 1912, when the corporation conducted the feast, there was no actionable nuisance which would justify the Court in granting an injunction. **BEDFORD v. LEEDS CORPORATION** Sargant J. 77 J. P. 430

**NUISANCES—continued.****Smell.**

*Fried fish shop—Injunction.*

A fried fish shop, carried on in close proximity to a dwelling-house, may cause an actionable nuisance, and will be restrained, if the evidence shews that the odour causes "an inconvenience materially interfering with the ordinary comfort physically of human existence" within the definition contained in the judgment in *Walter v. Selfe* (1851) 4 De G. & Sm. 315. **ADAMS v. URSELL - Swinfen Eady J.** [1913] 1 Ch. 269; 82 L. J. (Ch.) 157; 108 L. T. 292; [1913] W. N. 18; 57 S. J. 227—London.

See **LONDON—Nuisance.**

- Sewage farm—Discharge of sewage on private land—Smell—Agricultural ditch—Injunction—Damages. See **LOCAL GOVERNMENT—Drainage.**

**Smoke.**

*Emission of smoke from furnaces constructed to consume their own smoke—Negligent stoking—Owners' liability for negligence of stokers—Bradford Corporation Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. cxvii.), s. 53.*

Sect. 53, sub-s. 2, of the Bradford Corporation Act, 1910, enacts that "if any person using or permitting to be used any furnace so constructed [as to consume its own smoke] shall, in the event of smoke arising therefrom not being effectually consumed or burnt, fail to show that the said furnace has not been negligently used, he shall, if he is the owner or occupier of the premises, . . . be liable to a penalty not exceeding five pounds. . . ."

The appellants' furnaces, constructed so as to consume or burn their own smoke, emitted smoke which was not effectually consumed or burnt, and this emission was found to be due to negligent stoking on the part of their stokers and not to accident or any other cause which could not have been foreseen:—

*Held*, that they were personally liable for the negligence of their stokers, and had been properly convicted of a contravention of the subsection above set out.

*Chisholm v. Doulton* (1889) 22 Q. B. D. 736; distinguished. **ARMITAGE, LD. v. NICHOLSON**

Div. Ct. 11 L. G. R. 547; 23 Cox, C. C. 416;

108 L. T. 993; [1913] W. N. 116; 77

J. P. 239; 29 T. L. R. 425

*Provisional order of Local Government Board amending local Act—Saving clause for ironworks, &c., in Public Health Act, 1875, overridden by confirmation of provisional order—Bolton Improvement Act, 1854 (17 & 18 Vict. c. cliv.), ss. 115, 116, 196—Bolton Corporation Act, 1872 (35 & 36 Vict. c. lxxviii.), ss. 97, 133—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 803, 334—Bolton Order, 1893, art. II. (2) (a).*

**BESSEMER & Co., LD. v. GOULD** Div. Ct.

10 L. G. R. 744; 23 Cox, C. C. 145; 107

L. T. 298; 76 J. P. 249

**Streets.**

*Various companies laying mains under streets—Damage to electric cables by bursting of*

**NUISANCES (Streets)—continued.**

*hydraulic mains—Statute, Construction of—Two Acts to be construed together as one Act.*

The plts. were the owners of electric cables which had been laid under certain public streets. The defts. were the owners of hydraulic mains which had been laid under the same streets under statutory powers. These mains burst in four different places, in each case damaging the plts.' cables. The bursting of the mains was not due to any negligence on the part of the defts. Two of the mains which so burst had been laid under a private Act which did not contain the usual clause providing that nothing in the Act should exempt the co. from liability for nuisance. The other two had been laid under a later Act which did contain such a clause. The later Act also provided that the two Acts should be "read and construed together as one Act":—

*Held:* (1.) That the doctrine of *Rylands v. Fletcher* (1868) L. R. 3 H. L. 330, applies not only to cases in which the dangerous thing has escaped from the deft.'s land on to the plt.'s land and done damage there, but also to cases in which the site of the plt.'s injury was occupied by him only under a licence and not under any right of property in the soil, and that in the absence of statutory authorization of the nuisance the defts. were liable for the damage caused by the bursting of their mains notwithstanding that they had not been guilty of any negligence.

*Midwood v. Manchester Corporation* [1905] 2 K. B. 597, followed.

(2.) That the effect of the two Acts being read together as one Act was to take away the privilege which, down to the passing of the later Act, the defts. had enjoyed, in respect of the two first mentioned mains, of not being liable for damage done by their bursting in the absence of negligence, and that consequently in the case of all four of the mains the defts. were liable as for a nuisance. *CHARING CROSS, WEST-END AND CITY ELECTRICITY SUPPLY CO. v. LONDON HYDRAULIC POWER CO.* - *Scrutton J.* [1913] 3 K. B. 442; 11 L. G. R. 1013; 109 L. T. 635; [1913] W. N. 230; 77 J. P. 378; 29 T. L. R. 649

*Theatre—Crowd in street—Obstruction of adjoining premises.*

The defts., the manager and proprietors of a theatre, *held* (Phillimore J.) dissenting liable for obstruction to access to the plt.'s premises by reason of the assembling of a large crowd or queue in the street previously to the opening of the theatre.

Decision of Joyce J., 29 T. L. R. 428, affirmed. *LYONS, SON & CO. v. GULLIVER AND THE CAPITAL SYNDICATE, LD.* - *C. A.* 30 T. L. R. 75; 58 S. J. 97

**NULLITY—Divorce.**

*See* DIVORCE.

**OBSTRUCTION—Highway.**

*See* HIGHWAY and NUISANCE.

— Light and air.

*See* LIGHT and AIR.

**OFFENCE.**

*See* CRIMINAL LAW, JUSTICES, LICENSING ACTS and MOTOR CAR.

**OFFENSIVE TRADE**—Order of local authority declaring trade offensive.  
*See* LOCAL GOVERNMENT.

**OFFICE.**

*See* REVENUE—Income Tax.

**OFFICIAL RECEIVER.**

*See* BANKRUPTCY—Costs, Receiver.

**OLD AGE PENSIONS.**

*See* LOCAL GOVERNMENT — County Council.

**ONTARIO—Laws of.**

*See* CANADA—Ontario.

**ONUS OF PROOF.**

*See* EVIDENCE.

**OPTION**—Agreement to give an option to purchase and also a commission on sale — Construction — Appeal from Manitoba.

*See* PRINCIPAL and AGENT.

**ORDER**—Form of—Action tried in Chancery Division with witnesses — Appeal — Schedule of evidence.

*See* APPEAL—Court of Appeal.

**ORDERS OF COURT**—Rules and Orders of Court judicially considered during 1913, *see* Table of Rules and Orders of Court judicially considered, *ante*, p. cxxvii.

Rules and Orders of Court, &c., published in the *Weekly Notes*, *see* *ante*, p. cxxxi.

**OTTOMAN DOMINIONS**—Appeal from Consular Court in.

*See* INSURANCE—Fire.

**"OUTGOINGS"**—Covenant by lessee to pay—Lease—Exterior of premises—Drain.  
*See* LANDLORD and TENANT—Lease.

**PAIGNTON IMPROVEMENT ACT, 1898.**

*See* HIGHWAY—Dedication.

**PAPAL BULL**—Publication of translation of *Papal bull*—13 Eliz. c. 2.

The translation of a Papal bull and its publication in a newspaper simply for the information of readers is not a contravention of 13 Eliz. c. 2. The words of the statute "publish or . . . put in ure" mean publishing so as to make the bull operative in this country. *MATHEW v. "THE TIMES" PUBLISHING CO., LD.* - *Darling J.* 29 T. L. R. 471

**PARCELS**—Conveyance—Plan—Falsa demonstratio.

*See* VENDOR and PURCHASER.

**PARISH COUNCIL**—Chairman—Duration of office—New council—Annual meeting—Right of chairman to vote at election of his successor.

*See* LOCAL GOVERNMENT.

**PARLIAMENT.**

*Disqualification.* See below, House of Commons.

*House of Commons*, col. 431.

*Occupation Franchise*, col. 432.

*Ownership Franchise*, col. 433.

*Rating.* See above, *Occupation Franchise*.

*Register, Correction of*, col. 434.

**Disqualification.**

See below, House of Commons.

**House of Commons.***Disqualification.*

*Contract on account of public service—Action for penalties—Venue—Affidavit of informer—Claim based on wrong statute—Amendment of writ—Claim barred by prior writ—Evidence—Test roll of House of Commons—Return book—Return of writ of election—Official copy of division lists—Partnership Act, 1801 (41 Geo. 3, c. 52), ss. 1, 6.*

*Held*, that the provision in s. 9 of the House of Commons (Disqualification) Act, 1782, requiring the plt. to sue for the penalty "in any of His Majesty's Courts at Westminster" was inconsistent with the provisions of 21 Jac. 1, c. 4, requiring actions for offences against penal statutes to be commenced in the county in which the offence was committed, and that therefore those provisions of the Act of 21 Jac. 1, c. 4, did not apply to an action for penalties under the Act of 1782, and an affidavit as to venue was not necessary.

*Semble*, Order xxxvi., r. 1, of the Rules of the Supreme Court, 1883, abolishing local venues has the effect of repealing ss. 1—3 of 21 Jac. 1, c. 4.

The deft., being a partner in a firm of bankers and bullion brokers, was elected a member of the House of Commons. After his election and while he was still a member of Parliament, the firm entered into contracts to supply silver to the Secretary of State for India in Council. On various occasions while the firm was executing the contracts the deft. sat and voted in the House of Commons:—

*Held*, that he was liable to penalties under the House of Commons (Disqualification) Act, 1801.

The writ in an action of penalties was issued on Nov. 9, 1912. Another writ claiming penalties for the same offences was issued on Nov. 8, 1912:—

*Held*, that the right to penalties attached to the person who issued the first writ and that the present plt. had no right of action.

*Chalchman v. Wright* (1604) Noy, 118; *Girdlestone v. Brighton Aquarium* (1878) 3 Ex. D. 137, followed.

The writ and statement of claim in both actions claimed penalties under the Act of 1782:—

*Held*, that the penalties were recoverable,

**PARLIAMENT (House of Commons)—continued.**

if at all, under the Act of 1801 and not under the Act of 1782, and that in the circumstances the plt. should not be allowed to amend his writ and statement of claim so as to claim under the later Act.

The test roll of the House of Commons and the official copy of the division lists,

*Held*, admissible in evidence.

As to the return book, *quære*.

The best evidence of membership of the House of Commons is the return of the writ of election with the returning officer's indorsement thereon.

A member of the firm in which the deft. was a partner was called upon subpoena to produce the deed of partnership. This he objected to do on the ground that the deed was in the joint possession of the partners and that his co-partners, one of whom had not been subpoenaed and was not before the Court, objected to the production. The deeds had been executed in multiple and each partner had the right to possession of a duly executed copy:—

*Held*, that the witness was bound to produce his copy.

*Att-Gen. v. Wilson* (1839) 9 Sim. 526; *Crowther v. Appleby* (1873) L. R. 9 C. P. 23; *Kearsley v. Phillips* (1882) 10 Q. B. D. 36, distinguished.

*Re v. Daye*, [1908] 2 K. B. 333, applied.

*FORBES v. SAMUEL* Scrutton J. [1913] 3 K. B. 706; 82 L. J. (K. B.) 1135; 109 L. T. 599; [1913] W. N. 177; 29 T. L. R. 544

See AMENDMENT.

*Contract with the Secretary of State for India in Council—Contract for the public service—22 Geo. 3, c. 45—41 Geo. 3, c. 52—21 & 22 Vict. c. 106.*

A member of a firm holding a contract with the Secretary of State for India in Council is, under 22 Geo. 3, c. 45, and 41 Geo. 3, c. 52, disabled from sitting and voting in the House of Commons. *In re SAMUEL* P. C. [1913];

A. C. 514; 82 L. J. (P. C.) 106; 108 L. T. 696

**Occupation Franchise.**

*Registration—Dwelling-house—"Wholly let out in apartments or lodgings"—Point not taken before revising barrister—Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 182, s. 42—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7.*

Sect. 7 of the Representation of the People Act, 1867, which prohibits the rating to the poor rate of the owners of dwelling-houses or tenements in a parliamentary borough instead of the occupier save as thereafter mentioned, provides: "Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor rate."

An ordinary dwelling-house in a parliamentary borough was let in two portions, not structurally separated, to two tenants, certain portions, such as the front door and passages,

**PARLIAMENT (Occupation Franchise)—contd.**

being used in common. Each tenant separately occupied the portion let to him as a "dwelling-house" as defined in s. 5 of the Parliamentary and Municipal Registration Act, 1878, the landlord not residing in the house nor reserving any part thereof for his own use. The tenant of one of those portions, who was not rated in respect of his occupation, claimed to have his name inserted in Division I. of the occupiers' list of voters for the borough as the inhabitant occupier of a dwelling-house:—

*Held*, that the house, within which the "dwelling-house" occupied by the claimant was contained, was "wholly let out in apartments" within the meaning of s. 7 of the Representation of the People Act, 1867, and that therefore the claimant was entitled to the franchise.

Upon a case stated by a revising barrister the Court is confined to the points of law reserved therein for its opinion, and will not allow a new point of law to be raised. *Crow v. HILDEARY* - Div. Ct. [1913] 1 K. B. 385; 82 L. J. (K. B.) 380; 11 L. G. R. 226; 7 Smith, Reg. Cas. 410; 108 L. T. 300; [1912] W. N. 303; 77 J. P. 164; 29 T. L. R. 142

*See* RATES—Rateable Value.

*Registration of electors—Household qualification—"Inhabitant occupier" or "lodger"—Occupier of separate floor of house—Landlord rated for the whole house and occupying ground floor in the day time—Representation of People Act, 1867 (30 & 31 Vict. c. 102), ss. 3, 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4, 19—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 14—Representation of the People Act, 1884 (48 Vict. c. 3), s. 9 and Schedule—Registration Act, 1885 (48 Vict. c. 15).*

The appellant occupied the top floor of an ordinary dwelling-house rented by a medical man who was the rated occupier, and who used the ground floor as a surgery, and who paid the rates for the whole house, but did not reside there in the sense of sleeping on the premises. The first floor was occupied by another claimant. The appellant's name did not appear in the occupier's column of the rate book, but it appeared, for part of the qualifying period only, in the column headed "Representation of the People Act, 1884," as "Havercroft, Josh., Top floor." The appellant contended that he was entitled to be put on the occupiers' list either as a householder or as a 10% occupier:—

*Held*, that as the top floor occupied by him had not been rated as a separate hereditament, since he had paid no rates in respect of it, he was not entitled to be put on the register. *Kent v. Fittall* (No. 4) [1911] 2 K. B. 1102, followed. *HAVERCROFT v. DEWEY* - Div. Ct. 11 L. G. R. 28; 2 Smith, Reg. Cas. 393; 108 L. T. 296; 77 J. P. 115; 29 T. L. R. 62

**Ownership Franchise.**

*Receipt of rents and profits—Direction to pay rents to third person—Case stated by revising barrister—Signature by registration agent on*

**PARLIAMENT (Ownership Franchise)—cont.**

*behalf of claimants—Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26.*

By s. 26 of the Representation of the People Act, 1832, it is enacted that "... No person shall be ... registered ... in respect of his estate or interest in any lands or tenements as a freeholder ... unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use" (for a period prescribed).

Four brothers who were freeholders of certain houses authorized their trustee to send the rents of the houses to their father during his life, instead of dividing them amongst themselves:—

*Held*, that the freeholders were in receipt of the rents of the houses within the meaning of the section and were therefore entitled to be registered as voters in respect of their interest as freeholders.

At the end of a case stated by a revising barrister there was the following statement:—

"I for myself and on behalf of the other persons who are interested as appellants in this matter and whose names are hereunder written in Schedule Number I. do appeal against this decision.

"(Signed) Ernest L. White, Appellant."

The names of the claimants appeared in the schedule which was written below the statement. It appeared that Ernest L. White was a registration agent, and that he was not personally interested in the appeal:—

*Held*, that although the case ought to have been signed by the parties really interested, and not by an agent, the statement was equivalent to the agent saying that the persons whose names appeared in the schedule, i.e., the claimants, were appellants and had authorized him to sign on their behalf, and that therefore the Court had jurisdiction to entertain the appeal. *WHITE v. BOWN* - Div. Ct. [1913] 1 K. B. 78; 82 L. J. (K. B.) 89; 11 L. G. R. 23; 2 Smith, Reg. Cas. 386; 108 L. T. 159; 77 J. P. 78

**Rating.**

*See* above, Occupation Franchise.

**Register, Correction of.**

*Lists of voters—Omission to expunge names successfully objected to—Omission through inadvertence—Lists transmitted to town clerk—Register printed from lists—Jurisdiction of Court to order revising barrister to correct mistake—Lists destroyed—Mandamus—Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 41, 47, 48.*

*REX v. HANLEY REVISING BARRISTER. REX v. STOKE-ON-TRENT TOWN CLERK* Div. Ct. [1912] 3 K. B. 518; 81 L. J. (K. B.) 1152; 10 L. G. R. 842; 2 Smith, Reg. Cas. 362; 76 J. P. 438; 28 T. L. R. 513

**PARLIAMENTARY DEPOSITS ACT, 1846—**

*Tramways—Abandonment.*

*See* TRAMWAYS—Abandonment.

**PARTICULARS—Collision—Pleadings—General allegation of negligence—Application for particulars—Failure to give particulars—Allegation**

**PARTICULARS—continued.**

*struck out—Power of Court to give effect to negligence proved but not pleaded.*

A vessel at anchor was run into and damaged by a vessel in motion.

In an action for damage, the owners of the vessel at anchor delivered a statement of claim in which they alleged that those on the vessel colliding with them did not take proper and seamanlike measures to keep clear.

A summons for particulars of the measures which should have been taken was dismissed by the registrar.

The defts. appealed to the judge in chambers. On appeal:—

*Held*, that as the plts. could give no particulars, the allegation should be struck out, the judge at the trial having power to deal with any negligence proved but not pleaded. THE "KANAWHA" - - Bargrave Deane J.

12 Asp. Mar. Law Cas. 617; 108 L. T. 433

*Extraordinary traffic—Damage to highway—Action to recover extraordinary expenses—Particulars of average expense of highways in neighbourhood—Particulars of average expense of the highway damaged—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.*

In an action brought by a highway authority to recover expense incurred by them in repairing a highway in their district which they alleged to have been damaged by extraordinary traffic conducted thereon by order of the defts., which expense was alleged to be extraordinary, having regard to the average expense of similar highways in the neighbourhood:—

The C. A. ordered the plts. to deliver to the defts. the best particulars that they could of the average expense for the past five years of the similar highways in the neighbourhood, stating the cost of labour, the establishment charges, and the nature and amount and cost of materials, but refused to order the plts. to deliver to the defts. particulars of the average expense for the past five years of the highway damaged, stating cost of labour, establishment charges, and the nature and amount and cost of materials. MORPETH R. D. C. v. BULLOCKS HALL COLLIERY CO.

C. A. [1913] 2 K. B. 7; 82 L. J. (K. B.) 547; 11 L. G. R. 475; 108 L. T. 479; [1913] W. N. 55; 77 J. P. 188; 29 T. L. R. 297; 57 S. J. 373

*Libel—Justification—Particulars of justification—Facts on which defendant relies in support of justification.*

The plt., an owner and trainer of racehorses, sued the defts. for libel, alleging in his statement of claim that the meaning of the libel was that the plt. had been guilty of gross dishonesty in the training and running of horses, and particularly that he had on several occasions conspired with other trainers and with jockeys to defraud bookmakers and owners of racehorses and the public generally for his own pecuniary gain. The defts. pleaded justification, and under an order made by the judge delivered particulars ranging over

**PARTICULARS—continued.**

a period of three years, specifying a number of races, jockeys, and horses with the weights carried by them, and giving the names of certain trainers. The particulars further gave numerous instances of races in which horses were asserted to have been "pulled" by their jockeys, acting under the plt.'s orders, with the result that other horses backed by the plt. had won. A summons for further and better particulars, naming the bookmakers with whom the plt. was alleged to have backed the horses in question and the amounts of the bets respectively, having been dismissed by the judge, the plaintiff appealed:—

*Held*, that the following rules were established, namely, that where a deft. raises an imputation of misconduct against the plt., the plt. ought to be enabled to go to trial with knowledge of the acts which it is alleged he has committed and upon which the deft. intends to rely as justifying the imputation; and that if the particulars are such as the deft. ought to give, he cannot refuse to do so merely on the ground that his answer will disclose the names of his witnesses.

*Held*, further, applying these rules, that the plt. in this case was entitled to have particulars of the names of the persons with whom or through whom the defts. proposed to prove that he had made the bets to which they intended to refer, and the places or times at which such backings took place. He was not, however, entitled to particulars as to the amounts of such bets. WOOTTON v. SIEVIER

C. A. [1913] 3 K. B. 499; 82 L. J. (K. B.) 1242; 109 L. T. 28; [1913] W. N. 187; 29 T. L. R. 596; 57 S. J. 609

*Libel—Publication—Particulars.*

RUSSELL v. STUBBS, LD. - C. A. [1913] 2 K. B. 200, n.; 82 L. J. (K. B.) 756, n.

— Undue preference.

See DISCOVERY—Interrogatories.

**PARTIES**—Adding defendants—Rural district council—Assertion of right of way.

See LOCAL GOVERNMENT—Rural District Council.

— Joinder of Attorney-General.

See LOCAL GOVERNMENT—County Council and Rural District Council.

*Misjoinder of defendants—Separate causes of action—Claim for damages—R. S. C., Order XVI., rr. 1, 4.*

The plt. was the owner and occupier of 54, Crooms Hill, Greenwich. He had a right of way over a narrow lane known as Mays Buildings Mews, about twelve feet wide, leading from the high road and running close alongside his house and garden wall for a distance of 240 feet or thereabouts, which gave access to a back door leading into his garden, and also led to two factories or premises occupied by the two deft. cos. The plt. brought this action against both defts. for an injunction to restrain a nuisance and for damages. The statement of claim alleged that the Electric Light Co.'s works were erected in 1902, up to which time the site had been used for garden ground, and they had a right of way for

**PARTIES—continued.**

the purposes of such ground only, and that the Gutta Percha Co.'s works had been erected in 1908, up to which time the site had been used for the purposes of garden ground and stables, and they had a right of way for the purposes of such ground and stables only. It then alleged that the deft. cos. had since 1908 and did continually through each day wrongfully cause numbers of carriers, carters and others to drive along Mayo Buildings Mews heavy lorries, wagons, and other vehicles with loads of heavy merchandise, including huge reels of cable and coils of wire and other heavy materials weighing three tons or thereabouts, and to turn such lorries in the mews, causing a nuisance by the noise made by the shouting and swearing of the workmen, trampling of horses, jingling of harness, and the bumping and grating of the said vehicles against the wall. He also alleged that the said traffic had cut up the surface of the mews and made it foundrous, and caused an obstruction to his right of way; and had caused structural damage to his house and wall by vibration. He claimed an injunction and damages against both deft. cos.

The Electric Light Co. took out this summons asking that the plt. might be ordered to elect against which deft. he would proceed and that the motion might be dismissed with costs against the other deft.

Swinfen Eady J. said that the plt. really alleged a separate cause of action against each deft. He never alleged that they joined to commit any wrongful act. As to the damage by vibration he did not say which deft. caused it, and as to the other acts complained of he said that each deft. did them. It was argued that the principle of the decision in *Sadler v. Great Western Ry. Co.*, [1896] A. C. 450, did not apply, because Order XVI., r. 1, had been altered. But the altered rule provided that: "All persons may be joined as plaintiffs . . . where, if such persons brought separate actions, any common question of law or fact would arise." In his opinion if separate actions had been brought against these defts. no common question of law or fact could arise. The question in each case would be what legal wrong had the deft. committed, and each would be separately liable. He was of opinion that the case was governed by *Sadler v. Great Western Ry. Co.*, and the action must be stayed against one deft., the plt. electing which, with costs. The costs of the other deft. of this application must be costs in the action. But the order would not prevent the plt. commencing separate proceedings against the dismissed deft. *MUNDAY v. SOUTH METROPOLITAN ELECTRIC LIGHT CO. AND NEW GUTTA PERCHA CO.*

**Swinfen Eady J. [1913] W. N. 90; 29 T. L. R. 346; 57 S. J. 427**

*Misjoinder of plaintiff—Power of attorney—Plaintiff resident outside jurisdiction—Joinder of attorney within jurisdiction having no cause of action—Striking out plaintiff—Security for costs.*

In this case the plt., Jones, who was resident at Vancouver, B.C., had entered into an agreement with the deft., Miss Gurney, that she should undertake the guardianship of his

**PARTIES—continued.**

daughter and provide for her maintenance and education in England, for the sum of 150*l.* a year, payable quarterly in advance. This action was brought by Jones and Saldanha, as co-plt.s., against Gurney.

The statement of claim alleged that Gurney had not discharged the duties she had undertaken, but had placed Jones's daughter at a cheap boarding school, for which she had paid much less than she had received from the plt. Jones and spent little or nothing on her clothing; and that the plt. Jones had appointed Saldanha his attorney to take proceedings in England, and claimed an account and payment of the balance.

The deft. now moved that the name of Saldanha, as plt., might be struck out, on the ground that he was not a necessary or proper party to any relief sought in the action, and that the plt. Jones might be ordered to give security for costs within seven days, in a sufficient sum.

Swinfen Eady J. held that the statement of claim shewed no cause of action at all in Saldanha; and his name was improperly joined. Saldanha's name must be struck out. The plt. Jones must give security for costs, but it would be better to make a fresh application in chambers as to time and amount. **JONES AND SALDANHA v. GURNEY - Swinfen Eady J. [1913] W. N. 72**

— Mortgages—Foreclosure, Effect of.

*See MORTGAGE.*

*Parties—Persons having same interest—Unincorporated body—Defendants sued as representatives—Some members resident abroad—Selection of representatives by judge—R. S. C., 1883, Order XVI., r. 9.*

The plt. brought an action for architect's fees against four defts., who were members of a brotherhood of 1800 members and were sued as representing all the members. Some of the members of the brotherhood lived in England and some abroad. The work in question had been done for those living in England. The brotherhood was not a corporation. The judge in chambers gave the plt. leave to sue the four defts. named in the writ on behalf of all the members:—

Held, that as the judge had not considered the question of authorizing such persons as he thought fit to act as representatives, and as the action, being an action of debt against the four persons named as defts., did not fall within Order XVI., r. 9, the judge's order must be set aside. *WALKER v. SUR AND OTHERS*

**C. A. 30 T. L. R. 171**

*Plaintiffs—Representative action—Lloyd's policy—One underwriter suing on behalf of other underwriters—Numerous parties having the same interest in one cause or matter—R. S. C., Order XVI., r. 9.*

The defts. entered into an agreement of motor reinsurance with the plt. and eighteen other underwriters at Lloyd's. The agreement, which provided that the defts. should pay to the underwriters a premium of 25*s.* on each car per annum, was signed by the underwriters in the manner usual in the case of Lloyd's policies. The plt. brought an action



**PARTIES—continued.**

on behalf of and for the benefit of all persons interested in and named as underwriters in the agreement to recover certain premiums due under the agreement. The debts. said that the plt. was not entitled to maintain the action as the agreement was made with the plt. and the other underwriters as joint contractors:—

*Held*, that the plt. was entitled under R. S. C., Order xvi., r. 9, to maintain the action as the underwriters who were parties to the agreement were numerous and had a common interest in the action.

*De Hart v. Stevenson* [1876] 1 Q. B. D. 313, followed. *JANSON v. PROPERTY INSURANCE Co., LD.* - - *Horridge J.* 19 Com. Cas. 36; 58 S. J. 34

— Trade union—Expulsion of member—Ultra vires—Injunction—Unregistered association.

*See* TRADE UNION.

**PARTITION—Partition action—Infant—Request for sale—Sale for infant's benefit—Conversion—Partition Act, 1868 (31 & 32 Vict. c. 40), s. 8—Partition Act, 1876 (39 & 40 Vict. c. 17), s. 6—Settled Estates Act, 1856 (19 & 20 Vict. c. 120), ss. 23, 24, 25—Settled Estates Act, 1877 (40 & 41 Vict. c. 18), ss. 34, 35, 36.**

An infant's share of the proceeds of sale of real estate, sold by the Court in a partition action, though sold at his request and for his benefit, is not converted.

*Foster v. Foster* (1875) 1 Ch. D. 588, and *In re Barker* (1881) 17 Ch. D. 241, 243, applied.

*Dicta* of Jessel M.R. in *Wallace v. Greenwood* (1880) 16 Ch. D. 362, 365, 366, not followed. *HOPKINSON v. RICHARDSON - Swinfen Eady J.* [1913] 1 Ch. 284; 82 L. J. (Ch.) 211; 108 L. T. 501; [1913] W. N. 19; 57 S. J. 265

**Partition action—Real estate—Conversion—Order for sale by Court—Married woman—Partition Act, 1876 (39 & 40 Vict. c. 17), s. 6.** *HERBERT v. HERBERT - [1912] 2 Ch. 268; 81 L. J. (Ch.) 733; 107 L. T. 491; [1912] W. N. 166*

**PARTNER.**

*See* PARTNERSHIP.

**PARTNERSHIP—Company—Liquidation—Liability of partners—Joint and several liability—Right of double proof.**  
*See* COMPANY—WINDING-UP—Proof.

*Gaming—Bookmakers—Account.*

In 1908 the plt. and the deft. entered into a partnership to carry on a betting business. No money was subscribed at the time, but money was found by the plt. for the conduct of the business as required. In 1910 the partnership was dissolved by mutual consent, and on an account being taken the deft. agreed that 100% was due to the plt. and he gave the plt. an I O U for that amount. Subsequently he paid 7% on account, but as he did not pay the balance of 93%, he was sued for that amount by the plt. It was proved in evidence that 173% had been drawn out of the partnership account by the deft. for private purposes; that 35% was standing to the credit of the partnership at the date of the

**PARTNERSHIP—continued.**

dissolution; and that the 100% for which the I O U was given was a rough estimate of the share due to the plt.:—

*Held*, (1.) that there was no evidence that the partnership business was carried on in a manner that was illegal within the Betting Act, 1853; (2.) that the I O U was not a promise, express or implied, to pay a sum to the plt. within the Gaming Act, 1892; and that the plt. was entitled to recover. *BROOKMAN v. MATHER*

*Avory J.* 29 T. L. R. 276.

**Illegal sale of partnership property—Re-purchase from bona fide purchaser for value without notice—Fiduciary relation—Liability to account.**

A partner who has improperly, and without the knowledge of his partner, sold partnership property to a bona fide purchaser for value without notice, and has afterwards repurchased it from him, stands in a fiduciary relation to his partner, and cannot take advantage of the rule which protects a purchaser with notice taking from a purchaser without notice, but is liable to account for profits made by subsequent dealings with the property.

*Know v. Gye, L. R. 5 H. L. 656, and Piddoche v. Burt* [1894] 1 Ch. 343, distinguished. *GORDON v. HOLLAND. HOLLAND v. GORDON P. C. 82 L. J. (P. C.) 81; 108 L. T. 385*

— Income tax—Super-tax—Partner—Share of profits of partnership business—Method of assessing partner to super-tax.  
*See* REVENUE.

**Joint adventure—One joint adventurer using his own goods in fulfilment of contract—Liability to account to co-adventurer.**

The plt., who was an Austrian merchant, and the debts., who were English coal exporters, entered into an agreement to sell on joint account English coal to the Austrian Government, and in 1910 they secured a contract to supply that Government with 20,000 tons of coal of certain named qualities, deliverable in 1911. During 1911 the price of coal rose considerably; the plt. and debts. foresaw a heavy loss in carrying out the Austrian contract; and they thereupon agreed in July, 1911, that the completion of the contract should be left entirely in the hands of the debts., who could act as they thought best in the matter, without taking the plt. into account in any way, and that the plt. should pay the debts. 1000% as his share of the loss, that sum, however, to be reduced by any reductions in loss in the event of permission being received from the Austrian Government to supply coals of an inferior quality. In completing the Austrian contract permission was obtained to supply Powell Duffryn coal, which was not one of the named coals, but was of somewhat inferior quality, and the debts. supplied a certain quantity of that coal which they had purchased in 1910 at 14s. 6d. per ton, and this was put by them into the joint account between them and the plt. at 17s. 3d. per ton, which was the current market price at the time the coal was shipped to Austria; they had, however, to purchase other coal at the market price to maintain their

**PARTNERSHIP**—*continued.*

deliverable stocks. In a claim by the plt. for an account:—

*Held*, that the defts., although they acted in good faith, were not entitled, without the fullest disclosure to the plt., to sell their own coal to the adventure, and that therefore they could not bring into joint account the Powell Duffryn coal at a larger price than that at which they actually purchased it. **KUHLIRZ v. LAMBERT BROTHERS, LD.** - *Scrutton J.* 17 *Com. Cas.* 217; 108 *L. T.* 565

— Mining partnership of two persons—Stannaries — "Company" — Winding-up — Jurisdiction.  
*See* STANNARIES.

**PARTY WALL** — London building — Party structure — Defective party wall — Making good or repairing.  
*See* LONDON.

**PASSENGER** — Negligence — Breach of duty — Horse and carriage hired by husband — Vicious horse — Injury to wife — Knowledge of owner of horse — Control of carriage — Acceptance of wife as passenger.  
*See* NEGLIGENCE.

"**PASSENGER STEAMER**" — "Vessel used in navigation."  
*See* SHIPPING.

**PASSING-OFF.**

*Costs, col.* 441.

*Imitation of Get-up, col.* 443.

*Patented Article, col.* 443.

*Sale, col.* 444.

*Trade Mark, Use of. See* TRADE MARK.

*Trade Name—Right of Person to use his own Name, col.* 445.

**Costs.**

*Action for injunction—Dismissal of action on defendants' application—Plaintiffs electing not to proceed therewith—Plaintiffs contending that under the circumstances of the case they ought not to pay the costs of the action—Plaintiffs ordered to pay the costs—Order, XXXVI., r. 12.*

The plts., the proprietors of a blood tonic and nerve food, brought an action for an injunction and other relief against the defts., alleging that the defts. by means of fraudulent advertisements were endeavouring to get part of the plts.' business in Germany and in this country, and fraudulently to substitute their goods for those of the plts. On an unsuccessful motion by the plts. for an interlocutory injunction no order was made, except that the costs of the motion were made costs in the action. The plts. elected not to proceed to trial, and, on an application being made to dismiss their action, they contended that they ought not to be ordered to pay the costs, because the facts shewed that they were justified in bringing it, and its continuance had been rendered unnecessary, partly because of what the defts. had done and partly because

**PASSING-OFF (Costs)**—*continued.*

of certain successful proceedings in Germany:—

*Held*, that no reason had been shewn for departing from the ordinary rule in such cases, and the plts. must pay the costs of the action, including the costs of the application to dismiss the action, and the order thereon. **AKTIENGESSELLSCHAFT HOMMEL'S HAEMATOGEN v. HOMMEL AND OTHERS** - *Eve J.* 30 *R. P. C.* 133

*Action to restrain passing-off—Title of magazine—Monopoly of purely descriptive words—Action dismissed with costs.*

The plts. were the publishers of magazines called "The Magazine of Fiction" and "The Monthly Magazine of Fiction." The defts., who were also publishers, had for many years issued a magazine called "Cassell's Magazine" and had lately changed the name to "Cassell's Magazine of Fiction and Popular Literature." The price of the plts.' magazine was three-pence and the defts.' five-pence. The plts. brought an action against the defts. claiming an injunction to restrain them from passing off their magazine as and for the plts.' magazine, and gave evidence to shew that when, on many occasions, persons had asked for "The Magazine of Fiction" the defts.' magazine had been tendered. At the conclusion of the plts.' case and without calling on the defts.:—

*Held*, that the plts. had proved no title to relief; that they had no right to the exclusive use of the words "Magazine of Fiction," which were purely descriptive words; and that there was no evidence of deception. The action was dismissed with costs. **WILLIAM STEVENS, LD. v. CASSELL & Co., LD.** - *Neville J.* 30 *R. P. C.* 199; 29 *T. L. R.* 272

*Summons to review taxation — Action to restrain passing-off — Fees of third counsel — Expenses of attendance of the country solicitor at the trial in London disallowed — Complexity — Number of exhibits — Mode of framing objections — Disallowance upheld.*

In an action for passing-off, the trial of which occupied eleven days and resulted in judgment for the defts. with costs, the taxing Master disallowed the fees of a third counsel for the defts. and the expenses incident to the attendance at the trial in London of their country solicitor. The defts. objected to the certificate as to the third counsel on various grounds, including the amount involved in the action, the length and complication of the documents and exhibits, as well as the importance of the case and value of the stake involved in it. As to the attendance of the country solicitor, they relied upon the necessity of his explaining the exhibits at the trial, but the objections made no reference to a charge of personal fraud made against the principal deft.:—

*Held*, that the facts did not justify the allowance of the fees of a third counsel, and that the objections, which ought to be carefully drawn, not having relied on the fact of charges of fraud being made, but on the necessity of explaining the large number of exhibits in the case, the taxing Master was right, on

**PASSING-OFF (Costs)—continued.**

the materials before him, in disallowing the attendance of the country solicitor. The summons was dismissed on both points. **PERRY & Co., LD. v. T. HESSIN & Co.** - Eve J. 30 R. P. C. 193; 108 L. T. 332; 57 S. J. 302

**Imitation of Get-up.**

*Get-up of motor cabs—Use by defendant of his initials in a style calculated to deceive—Injunction granted.*

The plts. in a passing-off action, who were the proprietors of motor cabs, had for a long time adopted a particular style of get-up for their cabs, green and yellow being the prevailing colours, and the leading distinguishing mark being the initial letters "W. & G." in script characters on the panels below the windows, and in other places, written in a sloping direction, with the tail of the "G" elongated. The deft., who was also a motor cab proprietor, adopted a similar style of get-up for his cabs, and placed his initials "M. G." on the panels below the windows written in script characters with a twist or curl between the "M" and the "G." The evidence shewed that the colours green and yellow were common to the trade; that the plts.' cabs were well known and very popular among the public; and that they were generally known and asked for as "W. & G." cabs. The deft. contended that there could be no monopoly of initials in script characters:—

*Held*, that the deft. had got up his cabs in a way calculated to deceive by reason of the association of the green and yellow get-up with the "M. G." painted in a deceptive manner; that there was evidence of actual deception; and that the plts. were entitled to an injunction. **W. & G. DU CROS, LD. v. GOLD** - Swinfen Eady J. 30 R. P. C. 117; 29 T. L. R. 163

**Patented Article.**

*Action to restrain passing-off—Words whether descriptive or distinctive—Advertisements alleged to be deceptive—Words held descriptive—Passing-off not found—Advertisements held not calculated to deceive—Action dismissed.*

The plts. were the successors of a co. incorporated in 1897 for the purpose of acquiring and developing an invention consisting of a wire mechanism for transmitting power, for which a patent was granted in 1896, the mechanism being generally known as "Bowden Wire." In 1901 the deft. co. was promoted by the plts. to take over the plts.' business of the manufacture and sale of cycle brakes, such brakes being known as "Bowden Brakes." The defts.' business, down to 1903, included the manufacture and sale of brakes for motor cycles partly propelled by human power, but in 1903 all business connected with motor cycles was surrendered to the plts. Down to 1911 the plts. and defts. had practically common directors, but from that year they had been managed independently of each other. Early in 1912, the wire patent having expired, the defts. commenced to trade in fittings for motor cycles and in connection with that trade used the words "Bowden Control."

**PASSING-OFF (Patented Article)—continued.**

The plts. alleged that the expression "Bowden Control" and/or the word "Bowden" when used in respect of the control mechanism for motor cycles, meant, and was understood by the trade and public to mean, control mechanism of the plts.' manufacture and none other, and they complained of the use by the defts. of the word "Bowden" in advertisements in connection with control mechanism of the defts.' manufacture, identical or closely similar in appearance to that of the plts., without sufficiently distinguishing their goods from those of the plts., and of the offering of such goods for sale and advertising the same under the expression "Bowden Control." The plts. claimed three injunctions restraining the defts., their servants and agents—(1.) from using in any advertisement or circular or otherwise "Bowden Control" in respect of control mechanism for motor cycles not of the plts.' manufacture; (2.) from using the word "Bowden" in respect of control mechanism, whether in advertisements, circulars, or otherwise, without sufficiently distinguishing the defts.' goods from those of the plts.; and (3.) from advertising their goods in any manner calculated to lead to the belief that the same are the plts.' goods and/or that that the defts.' business is the plts.' or in any way connected therewith. The defts. denied that the terms were in fact distinctive of the plts.' goods, and alleged that the plts. were estopped, by reason of the relationship and certain agreements between the plts. and the defts., from alleging that the expressions "Bowden," or "Bowden Control," or "Bowden Mechanism Control" were so distinctive. The defts. further alleged that the terms "Bowden Wire" and "Bowden Brake" were purely descriptive of the mechanism comprised in Patent No. 25,325 of 1896 and Patent No. 14,402 of 1897 respectively.

*Held*: (1.) That the words "Bowden Control" were descriptive of the particular system of effecting control by means of the Bowden wire. (2.) That their descriptive meaning had not been displaced by their exclusive connection with the plts.' goods by reason of and during the continuance of the plts.' monopoly of Bowden wire, and that they had not acquired such a definite secondary meaning that the plts. could prevent others from using them. (3.) That the defts. were entitled to continue using the word "Bowden" as they had hitherto done. (4.) That the defts.' advertisements were not deceptive.

The action was dismissed with costs.

In a passing-off action the Court is not concerned with the truth or falsity of statements in the defts.' advertisements, except so far as they tend to induce the belief that the defts.' goods are the plts.' **BOWDEN WIRE, LD. v. BOWDEN BRAKE Co., LD.** - 30 R. P. C. 609

**Sale.**

*Sale of old stock of footballs by plaintiffs as their new and improved balls—Advertisements—Injunction—Description of goods in advertisements—Injunction granted.*

**PASSING-OFF (Sale)—continued.**

The plts., who were manufacturers of footballs and other athletic goods, sued the defts. for passing off certain of their old and discarded stock of footballs as and for their new and improved balls. It appeared that certain balls manufactured by the plts. in 1910, and called by the name of "Orb," had been sold by them to a firm of waste-rubber merchants on account of their having proved unsatisfactory, and a new and improved ball was made and sold by the plts. as the "Improved Orb." The defts. purchased from the waste-rubber merchants the balls which they had so acquired, and advertised and sold them under the name of "Improved Orb." The defts. admitted that they were wrong in describing them as "Improved Orb" and withdrew the advertisement. For a time they advertised and sold them as "Orb" balls, and claimed the right to do so:—

*Held*, that the defts. had not, by their second and corrected advertisement, shewn to the public that the balls which were then advertised were different from those to which the first advertisement would be taken to refer, and that the second advertisement was therefore likely to deceive. An injunction in a special form was granted, and an inquiry as to damages was ordered, and the plts. were given the costs of the action. *A. G. SPALDING & BROTHERS v. A. W. GAMAGE, LD.* - *Sargant J. 30 R. P. C. 388; 29 T. L. R. 541*

**Trade Mark, Use of.**

*See TRADE MARK.*

**Trade Name—Inadvertent Use of.**

*Innocent use of fancy trade name—Ts for port wine shipped by A. D. T.—Mistake—Admission of plaintiffs' rights—Disclaimer of intention to repeat before writ—Offer of undertaking—Offer insufficient—Injunction granted.*

*YEATMAN v. HOMBERGER & Co. - C. A. 29 R. P. C. 645; 107 L. T. 742; 29 T. L. R. 26*

**Trade Name—Right of Person to use his own Name.**

*Injunction refused—Appeal dismissed.*

John Brinsmead & Sons, Ltd., the well-known pianoforte makers, brought an action against Edward George Stanley Brinsmead, a pianoforte manufacturer, and Waddington & Sons, Ltd., pianoforte dealers, to restrain them from passing off pianos made by Stanley Brinsmead as and for the pianos of the plt. co., and they also charged the defts. with conspiring together to so pass off the pianos. The plt. co. put on the fall of their pianos the words "John Brinsmead & Sons, London," in capital roman letters surrounded by lines. On the fall of the pianos made by the deft. there appeared in a running hand the name "Stanley Brinsmead" with a broad dash at the foot of the "d" coming back under the whole of the name, and the word "London" in printed roman characters underneath. In the curls of the initial "S" in small letters were placed the names "Edward" and "George." The evidence

**PASSING-OFF (Trade Name—Right of Person to use his own Name)—continued.**

the trade and to the public a piano made by the plt. co., and that the Christian names used by the plt. co. and that of the deft. were not generally known. It also appeared that the deft.'s pianos were cheap instruments, and had a sale amongst a different class of people from that to which the plt. co.'s new pianos were sold. The defts. Waddington & Sons, Ltd., previous to and at the trial offered to submit to an injunction restraining them from passing-off, if the charge of conspiracy were withdrawn, which offer was not accepted by the plt. co. The evidence against Waddington & Sons, Ltd., shewed that they had advertised pianos of the deft. Brinsmead as "Brinsmead" by itself, and had represented to customers that one of such pianos was a "Brinsmead" piano:—

*Held*: (1.) That the deft. Brinsmead had put his name Stanley on his pianos as prominently as the word "Brinsmead" and had not attempted to imitate the mode in which the plt. co.'s name was used, and that he had not acted dishonestly, notwithstanding that he knew that he was deriving some advantage from the fact that his name was the same as that of well-known manufacturers; (2.) that the charge of conspiracy failed. The action as against him was dismissed with costs. Waddington & Sons, Ltd., having submitted to an injunction restraining them from passing-off, an order was made against them with the costs of the plt. co. up to the date of their first offer, except so far as the costs had been increased by the charge of conspiracy, but the plt. co. was ordered to pay the increased costs and the costs from the date of the offer.

The plts. appealed from the order dismissing the action against Edward George Stanley Brinsmead:—

*Held*, that the use by the deft. of his name alone did not deceive, and that the appellants had failed to prove any intention on his part to enable or induce dealers to pass off his pianos for those of the appellants. The appeal was dismissed with costs.

*Turton v. Turton* (1889) 42 Ch. D. 128, explained by Buckley L.J. *JOHN BRINSMEAD & SONS, LD. v. EDWARD GEORGE STANLEY BRINSMEAD - 30 R. P. C. 493; 29 T. L. R. 237; 57 S. J. 716*

Trade mark—Surname—Action to restrain passing-off and infringement of trade mark—Use by defendant of his own name in similar business—Motion to expunge—Motion refused—Injunction granted—Order of Board of Trade.

*See TRADE MARK—Registration.*

**PATENT.**

*Anticipation. See below, Infringement.*

*Discovery, col. 447.*

*Extension, col. 447.*

*Infringement, col. 448.*

*Injunction, col. 460.*

**PATENT**—continued.*Particulars, col. 465.**Patent Agent, col. 465.**Revocation, col. 466.**Specification, col. 466.**Threats Action, col. 467.***Anticipation.***See below, Infringement.***Discovery.**

*Infringement—Interrogatories—Application by plaintiffs for leave to deliver—One interrogatory objected to by defendants—application allowed.*

MARCONI AND MARCONI'S WIRELESS TELEGRAPH CO., LD. v. HELSBY WIRELESS TELEGRAPH CO., LD. - Eve J. 30 R. P. C. 430

**Extension.**

*Invention of great scientific merit, but commercially unsuccessful—No attempt by petitioners to work patent in United Kingdom—Patentee's lack of pecuniary interest in extension—Petitioners wanting in uberrima fides—Petition dismissed—Patents and Designs Act, 1907, s. 18.*

In 1899 a patent was granted for a "Method of and apparatus for effecting the storing up of speech or signals by magnetically influencing magnetisable bodies." One of the claims was for "The herein described method of receiving, storing and reproducing messages, signals or the like, by subjecting a magnetisable body, such as a steel wire or strip, to the action of an electromagnet which moves along it, or along which it is moved, the coil of this magnet being first in connection with a transmitter, so that the wire or strip is influenced in a manner corresponding to the signals transmitted, and the coil being then in connection with a telephone receiver by which the signals which influenced the wire or strip are reproduced." A petition for the extension of the patent was presented by the assignees of the patent, an American co., which was not a manufacturing, but only a promoting co. The bulk of that co.'s stock was held by a Danish co., which itself was not a manufacturing co., the manufacturing in Denmark being done by another Danish co. No attempt had been made to work the patent in the United Kingdom, beyond an endeavour to form a co. for the purpose. The invention was of great scientific merit, and apparatus made in accordance with it gave good results, but, although many attempts had been made to produce a commercially useful apparatus, no success had been achieved before the date of the presentation of the petition. The petition did not state the fact that the patentee, with an associate, had received 10,000l. from the sale of shares in one of the foreign cos.; it stated that the great defect in the machines had been their difficulty of adjustment and their fragility, but the patentee in his evidence stated that a machine exhibited did not suffer from fragility—

*Held*, that the petitioners had not shewn

**PATENT (Extension)**—continued.

that the merits of the invention were such as, in the interests of the public, would justify the extension of the term of the patent, and that they had not explained or attempted to explain or justify their not having attempted to put the invention into use in this country; also that if an extension were granted, the benefit of it would belong directly to the petitioners (who had not done anything to develop the invention), and indirectly to the Danish co., and still more indirectly to the patentee; and that the petitioners were wanting in the required uberrima fides, in that they had not stated in their petition the patentee's profit and had stated that the machines suffered from fragility. The petition was dismissed.

*Johnson's Patent* [1909] 1 Ch. 114, followed. *In re POULSEN'S PATENT*

Warrington J. 30 R. P. C. 597

**Infringement.**

*Anticipation—Patent already held by the House of Lords to be valid—Patent held not to have been anticipated—Patent held to be infringed—Stay of inquiry as to damages.*

The plts. in an action for infringement were owners of a patent for "improvements relating to the extraction of dust from carpets and other materials." The specification stated that it was essential for practical success to drive by power the pump employed for producing a vacuum and to maintain a vacuum of at least 5 lbs. per square inch in the filter on the side of the filtering medium where the air and dust entered, when the apparatus was at work, and that it was only to extractors working with a considerable vacuum that the claims related. The first claim was for the combination of an extracting implement connected with a power-driven suction pump and dust-collecting means interposed between the said implement and pump substantially as and for the purpose specified. The patent had been held by the H. L. in a previous action to have subject-matter and to be valid. The plts. complained of threats to infringe and of actual infringement. The machine alleged to infringe had suction bellows instead of a cylinder pump. The defts. alleged that the patent was invalid on the ground of publication of two specifications of H. and the prior user of machines made under H.'s patent, and they denied infringement on the ground that the patent sued on did not cover suction bellows although worked by motor, and on the ground that the machine complained of did not work substantially 5 lbs. vacuum:—

*Held*, that the previous decisions on the patent established that the vacuum mentioned by the patentee was the vacuum at the filter by the engine and not at the nozzle; that the statement as to a vacuum of 5 lbs. was directory only; that the defence of anticipation failed; that the defts. had threatened to infringe; and that, although in one alleged infringing machine the highest vacuum practically obtainable was 3 lbs. to 3½ lbs., the particular machine was not new, and that machines of that type, when new and of the best of materials, were capable of giving a higher working vacuum, and that in any case the defts. had infringed.

**PATENT (Infringement)—continued.**

An injunction was granted and an inquiry as to damages and delivery up or destruction of infringing articles were ordered. Costs as between solicitor and client were given, the validity of the patent having already been certified. The inquiry as to damages was stayed in the event of an appeal. **BRITISH VACUUM CLEANER CO., LD. v. JAMES ROBERTSHAW & SONS, LD.** - **Sargant J. 30 R. P. C. 413**

**Anticipation — Subject-matter — Injunction granted.**

The plts., who were the owners of letters patent for "Improvements in and relating to gas lamps," brought an action against the defts. claiming an injunction for infringement. The plts.' invention consisted of a new lamp containing an improved form of heater in combination with which was a heavy metallic nozzle protected by insulating material so that the tip could not become hot enough to ignite the gas and air mixture. It was alleged that the defts. had infringed by selling a lamp containing the combination although the heater was in a different form. The defts. denied infringement and alleged invalidity of the patent on various grounds, of which the principal was lack of subject-matter. Certain anticipations were also alleged:—

**Held**, that the plts.' patent was valid, and that claim 1 had been infringed. An injunction was granted with costs and the other usual relief. **KEITH (JAMES) AND BLACKMAN CO., LD. v. TILLEY HIGH PRESSURE GAS SYNDICATE LD.** - **Astbury J. 30 R. P. C. 537**

**Anticipation—Want of subject-matter—Injunction held to be invalid.**

Letters patent were granted in 1906 for "Improvements in wheels for road vehicles." The invention related to the road wheels of motor vehicles in which the rim of the wheel was detachably mounted on the felloe, so that in case of accident the damaged tyre, together with the rim, might be readily removed and replaced by another rim carrying a new and inflated tyre. In an action by the patentees for infringement the defts. denied infringement, and alleged that the patent was invalid owing to (inter alia) lack of subject-matter and anticipation. The plts. contended that their combination was such that it produced a practical result which other and prior specifications had failed to produce:—

**Held**, that the plts.' invention was a mere adaptation of a previous discovery to the new felloes and the new rims which had subsequently come into existence. The action was dismissed with costs. **EDGE & PUGH v. VINET RIM SYNDICATE, LD. AND FENESTRE, CADISCH & Co.** - **Eve J. 30 R. P. C. 269**

**Claim—Construction—Intention to use.**

Patentees claimed "the application to the manufacture of bags from a printed web or roll of paper or the like of means for enabling the rate of feed of the web in the bag-making machine to be accelerated or retarded, according as the web lags or creeps, so as to enable bags to be manufactured direct from a web or roll of previously printed paper with the printed matter or design upon the bags in correct position of

**PATENT (Infringement)—continued.**

register." They described various means of giving practical effect to that idea, all by varying the peripheral velocity of the rollers and therefore the rate of feed of the roll of paper from the drum. The respondents in an action of infringement, who were personally barred from contesting the validity of the patent, used in a bag-making machine a dance pulley, which by varying the length of the path the paper had to pass over between the drum and the knife accelerated or retarded at will the rate of feed to the knife without changing the peripheral velocity of the rollers:—

**Held**, that on a sound construction of the claim it covered all mechanical means of varying the feed of paper at the knife, and that the respondents had infringed.

**Quere** whether the respondents infringed the complainers' patent by having on their machine a device, which they never used or intended to use, for keeping the bags in register but only for a different purpose, but which device was capable of being so used, and, if so used, would have been a clear infringement. **E. S. & A. ROBINSON, LD. v. SMITH & RITCHIE, LD.** - **Lord Hunter L.O. (Sc.) 30 R. P. C. 63**

**Claim—Non-infringement found.**

In 1904 a patent was granted for "Improvements in or relating to knitting machinery." One of the claims was for "A latch needle for knitting machines, provided with a loop expanding finger pivoted to the stem of the needle and movable on its pivot substantially as and for the purpose described." In an action for infringement of the patent it was proved that the deft.'s needle had a piece of metal projecting laterally from the stem so as to expand a loop passing over it, but the deft. contended that his needle was adapted for use in a cone knitting machine, and could not be used in a cylinder knitting machine, and in that respect differed from the plt.'s needle, and was not an infringement:—

**Held**, that on the true construction of the specification the claim was for a needle adapted for use only in a cylinder machine; that the deft.'s needle was adapted for use in a cone machine; and that there was no infringement. Judgment was given for the deft. with costs. **GRIEVE v. SPIERS**

**Warrington J. 30 R. P. C. 235**

**Claim—Novelty—Counterclaim for revocation—Insufficiency of specification—Amendment of specification—Ultra vires—Non-infringement found—Specification held misleading—Judgment for defendants on claim—Counterclaim for revocation ordered to stand over, with liberty to apply.**

In 1905 a patent was granted for "Internal combustion engines." One of the claims was, after amendment, as follows, (the amendments being shewn in *italics* and the omissions in heavy type:—"The herein described improvements in an internal combustion motor comprising the cylinder and a member telescoped therewith, *said member comprising a head and a valve*

**PATENT (Infringement)—continued.**

seat one internal and the other external to the cylinder, said member and cylinder being relatively movable and the cylinder having ports adapted to be covered and uncovered by said relative movement, and a piston in the cylinder, in combination with means substantially as herein described for imparting to one of the aforesaid telescoped parts a movement which is relative to the other aforesaid telescoped part and variable with relation to the movement of the piston for covering and uncovering the ports." In an action for infringement of the patent, the defts. alleged (inter alia) that the patent was invalid for want of novelty (several prior specifications being cited) and for want of subject-matter, and that the specification was insufficient. At the trial it was admitted that the drawings and part of the description were incorrect, but it was contended by the plts. that the errors were not such as would mislead a competent gas engine engineer. In the defts.' engine the sleeve that opened and closed the ports had not only a reciprocating movement, but also a simultaneous rotary oscillating movement. The defts. made a counter-claim for revocation of the patent. It was held at the trial that two of the prior specifications described four-cycle engines in which a piston had attached to it a sleeve containing a port, which, by means of a rotary movement, applied to the piston and sleeve together, registered with a series of inlet and exhaust ports, or with slots placed on one side of the cylinder only, the sleeve making one revolution in four strokes; that the amendment of the plts.' specification, if it had enlarged the claim, must be rejected as ultra vires; that the defts.' device had a closer resemblance to the engines described in the two prior specifications than to the plts.; and that the defts. had not infringed; and, further, that the specification was misleading. The counter-claim for revocation was ordered to stand over, with liberty to apply. The plts. appealed to the C. A.:

*Held*, that the defts. had not infringed. The appeal was dismissed with costs.

*Held* by Hamilton L.J., that whether the specification was misleading was, in the present case, a question of fact depending upon the evidence given at the trial, and that he was not prepared to differ from the finding below.

Observations as to the comparative value of the evidence of experts and practical workmen in relation to that question. **KNIGHT v. ARCYLLS, LD.** C. A. 30 R. P. C. 321

*Claim—Patent held valid—Infringement found.*

In 1901 a patent was granted for "Improvements in weighbridges, or platform weighing machines." The first of the claims was for "The combination and arrangement of two weighbridges, so that the weight can be ascertained of either the two single loads separately, or the one combined load, substantially as described." In an action for infringement of the patent, the plts. contended that, upon the true construction of the specification, the patentee had claimed the combination described in the first claim and the general opening words of the specifica-

**PATENT (Infringement)—continued.**

tion, and that the patent was for three steel-yards and two weighbridges, with means for disconnecting the load from one lever and attaching it to the other two levers, or detaching it from the two separate levers and attaching it to the single one. The defts. contended that the patentee was claiming a principle, or that, if his claim was limited to the particular means described of applying the principle, they had not infringed. They also contended that once the requirement was stated, there was no invention in finding a method of satisfying it:—

*Held*, that the construction put upon the specification by the plts. was correct; that the patentee had not merely claimed a principle, but had described his invention generally and shewn one method of carrying it into effect; that the problem would not have been stated by any one requiring such a weighing machine as the plts. in such a way as to indicate the solution; and that the patent was valid and had been infringed. Judgment was given for the plts. with costs. **W. & T. AVERY, LD. v. HENRY POOLEY & SON, LD.**

Neville J. 30 R. P. C. 160

*Claim too wide—Novelty and subject-matter—Patent held invalid.*

Plts. were the proprietors of a patent granted in 1901 relating to the construction of radiators conveniently used, but not solely to be used, for motor cars. The flat-sided tubes and the general arrangement set forth in the specification were not to be found in any of the prior English specifications relied on as anticipations; but in 1900 the specification of a French patent granted to N. for a new assemblage of tubes in steam boilers, square-shaped tubes being mentioned therein, was deposited in the Patent Office Library in London. It contained, however, no reference to motor cars or radiators, and was probably not published in English until the trial of the present action. It was held at the trial that N.'s specification was not part of the stock of common knowledge at the date of the plts.' patent; and that the evolution of the radiator with flat-sided tubes constituted a sufficient invention to support a patent. Judgment was given for the plts. with costs, an injunction being granted with an inquiry as to damages and an order for delivery up: 30 R. P. C. 21.

The defts. appealed:—

*Held*, on appeal, that the particular method illustrated in the specification was not sufficient to cut down the generality of the claims, that the claims were too wide, and that the patent was invalid. The appeal was allowed with costs. **MERCEDES DAIMLER MOTOR CO., LD. v. F.I.A.T. MOTOR CAR CO., LD.** C. A. 30 R. P. C. 369

*Damages—Measure of damages—In what sense a jury question—Award by the Lord Ordinary, but no reasons for it given—Appeal—Award reviewable if materially inadequate—Measure prima facie the profit patentee would have made on infringing articles—Other considerations affecting damages discussed.*

W. L. & Co. raised an action against P. C.

**PATENT (Infringement)—continued.**

and W. for infringement of a patent and for 5000*l.* damages. After it had been found that the patent had been infringed, proof was led as to damages. The Lord Ordinary, without stating his reasons, assessed the damages at 1500*l.* The pursuers reclaimed.

The Second Division of the Inner House held that while the assessment of damages in such cases was a jury question in the sense that it was a matter for estimation rather than for exact arithmetical calculation, the basis on which such estimation was made should be disclosed by the Lord Ordinary in a reasoned opinion, and that, if the C. A. considered that the amount of damages awarded by him was substantially different from what should have been awarded, it was proper for them to vary the award.

*Held*, also, that prima facie in cases of infringement a patentee was entitled in name of damages to the amount of the profit he could have made, if he had himself effected the sales actually made by the infringer, but that this prima facie aspect might be readily altered by other considerations arising on a purview of the whole circumstances, such as the nature of the trade in question, the area of its exercise, and the volume of competition.

The Court recalled the Lord Ordinary's interlocutor and awarded 3000*l.* damages.

Observations as to the considerations that should have weight with the Court in fixing damages.

*United Horse Shoe Nail Co. v. Stewart & Co.* (1888) 5 R. P. C. 260, and *Meters, Ld. v. Metropolitan Gas Meters, Ld.* (1911) 28 R. P. C. 157, considered and followed. WATSON, LAIDLAW & CO., LD. v. POTT, CASSELS, AND WILLIAMSON

Ct. Sess. 30 R. P. C. 285

**Default of defence—Judgment for plaintiffs.**

OSRAM LAMP WORKS, LD. v. APPLE,

Warrington J. 30 R. P. C. 487

*Essential elements—Inverted gas burners—Bunsen burner—Isolator preferably made of bad heat-conducting material—Deflecting cone on isolator—Defendants' apparatus not having one of the essential elements of the patented apparatus—Infringement not found.*

The plts. were the owners of a patent for "Improvements in or relating to gas burners." The invention consisted in the use for incandescence gas lighting of a Bunsen burner in which the mantle was suspended head downwards provided with an isolator preferably made of bad heat-conducting material with a deflecting cone on such isolator, the isolator terminating in a burner head projecting into the incandescence mantle. The object aimed at by their invention was to prevent the striking back of the lighted gas. The defts. had sold inverted gas burners of the incandescent type, the main portion of such burners being constructed of glazed pottery ware and moulded in three parts, namely, a top cylindrical part furnished with air inlet holes, a down tube forming the mixing chamber, and an air shield preventing heated fumes entering the burner. The tube of their burner had internally projecting radial ribs having a central

**PATENT (Infringement)—continued.**

aperture in addition to radial spaces between them to break up the gaseous mixture before issuing at the burner nozzle. In an action for infringement of the patent Neville J. held at the trial that the defts. were entitled to reduce the heating of the gases and to do it by the use of an isolator of any thickness; that one of the essential parts of the patented invention was the deflector, and that element was wanting in the defts.' apparatus; consequently the defts. had not infringed the patent and the plts.' action must be dismissed with costs (30 R. P. C. 169). The plts. appealed:—

*Held*, by the C. A., that the decision of the learned judge in the Court below was right, that the defts. had not infringed the patent, and that the appeal must be dismissed with costs. NEW INVERTED INCANDESCENT GAS LAMP CO., LD. v. M. HOWLETT & CO.

C. A. 30 R. P. C. 699

**Evidence—Admissibility of expert evidence—**

*Construction of Specification—Sufficiency—Patent held invalid—Costs on the higher scale allowed.*

In 1903 a patent was granted for a "process for converting unsaturated fatty acids or their glycerides into saturated compounds." The process consisted in treating the fatty bodies with hydrogen in the presence of a finely-divided metal, such as platinum, iron, cobalt, copper, and especially nickel, adapted to act as a catalyzer. The specification stated that the saturation might be effected by causing vapours of fatty acid together with hydrogen to pass over the catalytic metal, but that it was sufficient to expose the fat or fatty acid in a liquid condition to the action of hydrogen and the catalyst. The specification gave no details of the process, but after having given, in general terms, an example of the process, stated that the quantity of the nickel added and the temperature were immaterial and would only affect the duration of the process. In an action for infringement of the patent the plts. contended that the publication of the fact that the process could be carried out with bodies in the liquid state was of great merit; they claimed that the patent was for a principle, and that, the patentee having shewn one way of putting it into practice, he was entitled to claim for all ways. The defts. contended that the experiments of their witnesses shewed that, for the success of the process, the catalyst must be prepared in a particular way and the process carried out with precautions not indicated in the specification and requiring research for their ascertainment:—

*Held*, that the patentee claimed the hydrogenation of all unsaturated fatty acids and their glycerides by the use of finely-divided platinum, iron, copper, and cobalt, as well as nickel, and that if the process failed as to any of the bodies to be hydrogenated or any of the catalysts, the patent was invalid; that no method of carrying the alleged invention into effect was sufficiently described in the specification; and that the patent was invalid. The action was dismissed with costs.



**PATENT (Infringement)—continued.**

*Chamberlain v. Mayor, &c., of Bradford*  
(1908) 20 R. P. C. 684, followed.

Observations as to the nature of the evidence of expert witnesses admissible in patent actions.  
**JOSEPH CROSFIELD & SONS, LD. v. TECHNO-CHEMICAL LABORATORIES, LD. - Neville J. 30**  
**R. P. C. 297 ; 29 T. L. R. 378**

See below, *Licence*.

*Subject-matter—Alleged prior grant—Cognate inventions - Patent held valid—Infringement found—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 16.*

A patent for "Improvements in and relating to detachable wheels and the like" was, under the provisions of s. 16 of the Patents and Designs Act, 1907, issued under No. 9033 of 1909, but sealed as of date July 1, 1908. The complete specification, as amended in 1911, contained the following claim, the omissions being shewn in italic type, and the addition in heavy type : "1. A detachable wheel hub, of the type indicated, in which the inner hub part passes through the outer hub part and through a locking ring screwed on to the inner hub part within which the end of the axle is contained, whereby it may be seen, when fixing the wheel, whether or not the detachable hub part is properly home on the inner hub part, and in which the outer end of the inner hub part carries a device for admitting lubricant to the bearings of the inner hub part, which device is arranged so that the outer hub part may be taken off without removing said device from the inner hub part, *substantially as described.* 2. A detachable wheel having the features according to Claim 1, in combination with a withdrawal means arranged so that access may be had to the thread of the locking ring for re-tapping or for examination without removing the locking ring from the detachable hub part, substantially as described with reference to the accompanying drawing." In an action for infringement of the patent, the defts. alleged (inter alia) want of subject-matter, prior grant, and non-infringement. The defts.' device had a cap screwed into the inner hub part, so that the cap projected beyond the outer hub part, but the latter projected slightly beyond the inner hub part without the cap. At the trial, the defts. contended that the cap was not a part of the inner hub part, and that the latter did not pass through the outer hub part, or that, if the cap was a part of the inner hub part, there was no lubricating device, and that in either case there was no infringement. The defts. alleged prior grant to the plt. of a patent issued under No. 7530 of 1908, with provisional specifications dated respectively April 4 and July 1, 1908. The latter specification had, with the provisional specification No. 9033 of 1909, formed part of an original provisional specification of July 1, 1908. The complete specification of 1908 contained the same drawing as the complete specification of 1909, but no description of the invention claimed in the latter specification, and it contained a disclaimer of that invention. The defts. contended that the disclaimer, referring to the unamended claims, did not apply to the amended claim :—

**PATENT (Infringement)—continued.**

It was held at the trial by Warrington J., 30 R. P. C. 32, that a narrow construction must be put on the specification, and, in consequence, the question of subject-matter did not arise ; that the defts.' cap was, in effect, part of their inner hub part, which thus passed through the outer hub part, and that there was infringement ; that the claim of the plt.'s amended specification was the same as the second claim of his unamended specification, and the disclaimer in the complete specification of 1908 applied to it, and the defence of prior grant failed. Judgment was given for the plt. with costs. The defts. appealed to the C. A. :—

*Held*, that the defences of want of subject-matter and prior grant failed ; and that the defts. had infringed.

The appeal was dismissed with costs. **PUGH v. RILEY CYCLE CO., LD. - C. A. 30 R. P. C. 514**

*Subject-matter—Combination—Patent held invalid for want of subject-matter.*

In 1907 a patent was granted for "an improved method and means for drying wool after washing." One of the claims was as follows :—"In apparatus for drying wool consisting of a cylinder chamber and an air-heating chamber, the former containing a series of revolving cylinders of perforated sheet metal round which the wool sliver is passed and the latter containing steam pipes or radiators for heating the air previous to passing the same from the heating chamber through openings in the partition between the two chambers into the cylinders and thence through the perforations into the cylinder chamber ; the device of providing a second connection between the cylinder chamber and the heating chamber whereby the fan or other means forcing or drawing the heated air through the perforations in the cylinders draws or forces the air back again to the heating chamber causing a repeated circulation of the heated air, and providing adjustable or intermittently opened shutters or doors, so that the saturated air may be allowed gradually to escape and similarly and simultaneously replaced by fresh air, for the purpose or purposes set forth." In an action for infringement of the patent, the plt. contended that the combination of the admittedly old elements, the cylinder chamber and air-heating chamber, with the means for causing the circulation of air, whereby the wool was dried by heated moist air, was new and gave great advantages over any machine previously used for the purpose. The patented machine was proved to have been very successful commercially. The defts. contended that drying by means of perforated bands and a circulation of heated air was old, and that the alleged invention had been anticipated, or that it merely consisted in the use of the parts for a purpose analogous to that for which they had been used before, and that there was no subject-matter.

It was held at the trial that the plt.' machine was better than any that had been in use before, but that each of the two parts

**PATENT (Infringement)—continued.**

of which it was composed performed only its own function, and no special result arose from their combination, and that the patent was invalid for want of subject-matter. Judgment was given for the defendants with costs. The plaintiffs appealed to the C. A.

The appeal was dismissed with costs.

Judgment of Joyce J., 30 R. P. C. 249, affirmed. **LAYLAND v. BOLDY & SONS, LD.**

**C. A. 30 R. P. C. 547; 29 T. L. R. 651**

**Subject-matter—Novelty—Patent held invalid.**

In an action for infringement the plaintiffs were the owners of letters patent for an invention relating to vibrating trough conveyors, the objects of which were to reduce vibration by balancing the conveyor trough, to reduce the power required to operate it, and to avoid the necessity of making the conveyor trough heavier towards the driving end in the case of long conveyors. For the first object the patentee divided the trough into sections, the adjacent sections being caused to move in opposite directions, thus reducing vibration. The defence relied on was mainly want of subject-matter in the patent:—

**Held**, that the balancing method for reducing vibration and the particular method of balancing were well known, and that, in effect, the invention was one which had been used in a machine for the classification of goods; and that, having regard to the state of knowledge, there was want of novelty, and that the patent was invalid. The action was dismissed with costs by Warrington J. (30 R. P. C. 229).

The plaintiff appealed. The appeal was dismissed with costs, Phillimore L.J. doubting as to whether the patent was valid for want of subject-matter, but holding that there was anticipation. **NORTON v. W. H. BARKER & SON**  
**C. A. 30 R. P. C. 741**

**Subject-matter—Novelty—Injunction—Patent held valid and infringed.**

In 1899 a patent was granted for an "Improvement marine torch." One of the claims was: "The combination with a shell, having a chamber charged with carbide of calcium or equivalent material adapted to produce illuminating gas in the presence of water, and having a second chamber for air or gas to render the shell buoyant, of a burner communicating with said carbide chamber, and a pilot light comprising a vessel charged with phosphide of calcium or equivalent material, said vessel having an opening through which the gas evolved may escape and said opening being adjacent to said burner, for the purpose set forth." In an action for infringement of the patent, the defendants alleged (inter alia) want of novelty and of subject-matter. Prior to the patent, a light for the purpose had been produced by means of calcium phosphide. Later, in 1895, C. had obtained a patent for the use of calcium carbide in conjunction with calcium phosphide; the two substances were contained in separate chambers, but the phosphoretted hydrogen and acetylene evolved were described in the specification as "mingling

**PATENT (Infringement)—continued.**

as they issue." The plaintiffs' torch was commercially successful:—

It was held at the trial by Swinfen Eady J., 29 R. P. C. 686, that, upon the true construction of C.'s specification, the gases evolved mixed before they reached the air, while in the plaintiffs' apparatus they were kept separate, with the advantage of using one as a pilot light to ignite the other; and that the patent was valid and had been infringed. An injunction was granted, with an inquiry as to damages. The defendants appealed to the C. A.

The appeal was dismissed with costs. **MARINE TORCH CO. v. HOLMES MARINE LIFE PROTECTION ASSOCIATION**

**C. A. 30 R. P. C. 631**

**Subject-matter—Patent for method of forming piles of concrete or cement—Plaintiffs using a hollow pile with an enlarged detachable head or "shoe"—Defendants using a collar round the end of their tube—Counter-claim for revocation.**

The plaintiffs, in an action for infringement were the owners of a patent for a method of forming concrete or cement pipes consisting in providing a hollow pile with an enlarged and detachable point, sinking the pile into the ground to form a hole larger than the pile stem, then slowly or intermittently withdrawing the pile without its point, filling the hole so left with concrete during such withdrawal and allowing the concrete to set. The defendants used a tube with a detachable point or shoe, which was larger than the tube, and a collar, some six or eight inches deep, round the end of the tube, which collar was of the same diameter as the shoe, and they alleged that they filled in their tube with concrete in a different manner from the patentee. The defendants denied infringement and alleged that the patent was invalid on the grounds set out in their particulars of objections. They also counterclaimed for revocation of the patent:—

**Held**, that the patented invention was a great advance on what had been done before, and that there was subject-matter for the patent, although the only novelty in the patented combination was the use of an enlarged detachable shoe or head; that the defendants had infringed, as they were using a method of what was the patented invention. Judgment was given for the plaintiffs on the claim and on the counter-claim. **SIMPLEX CONCRETE PILES, LD. v. J. & W. STEWART**

**Neville J. 30 R. P. C. 205**

**Subject-matter—Patent held valid and infringed.**

In 1902 a patent was granted for "Improvements in or relating to safety and other razors." In an action for infringement of the patent the defendants denied infringement and alleged that the patent was invalid for want of novelty and of subject-matter. The specification had been amended, consequent on a decision in a previous action in which certain claims in the specification had been held to be invalid for want of subject-matter. The amendments consisted in confining the inven-

**PATENT (Infringement)—*continued.***

tion to safety razors, and in striking out a passage in the specification and several of the claims, including those held to be invalid. The first claim in the specification, as amended, was for "A safety razor comprising a thin flexible blade detachably combined with a holder by which the blade is positioned and supported and its cutting edge is given the rigidity necessary to make it operative for shaving, substantially as described." The fifth claim was: "In a safety razor the combination of a rigid backing, a guard and a flexible blade detachably held between the backing and the guard, substantially as described." The sixth claim was for "A holder forming part of a 'safety' razor and having a double-edged guard and a handle located between the edges of the guard, substantially as described." The patentee, in his drawings, shewed a curved back and guard, which, when clamped together, bent the flat blade transversely. In the defts.' razor the guard and backing were flat, and there was therefore no bending of the blade. The defts. at the trial contended that the claims did not cover a flat blade, and they contended that the claims 1, 5, and 6, which had been held in a previous action to be good, were invalid for want of subject-matter. They relied in particular on an American specification not referred to in the previous action. At the trial it was held that the first claim was framed so as to omit the element of adjustability secured by utilizing the transverse curvature of the blade, and that, with this element omitted, it was immaterial whether the guard and backing had curved or flat clamped surfaces, and that the defts.' razor was an infringement; that the first claim was narrow, and limited to cases in which the thin flexible blade was positioned and supported by, and got rigidity from, the holder substantially as described, and the fifth was limited to cases in which the thin flexible blade was held between the backing and the guard, substantially as described, and that, notwithstanding the American specification, there was subject-matter in those claims; and that claim 6 was for the whole apparatus described, where it was adapted for a double-edged blade, but without the blade itself, and had subject-matter. Judgment was given for the plts., an injunction being granted and an inquiry as to damages from a date mentioned in the order giving leave to amend the specification, delivery up, and costs. The defts. appealed to the C. A. It was held, on the construction of the specification, that the first claim included the element of adjustability, being for the complete article and not for a subordinate integer, and did not cover a blade not secured by being bent, and that the defts. had not infringed. The appeal was allowed with costs. The plts. appealed to the H. L.

*Held*, that the defts. had not infringed the patent.

The appeal was dismissed, with costs. GILLETTE SAFETY RAZOR CO. v. ANGLO-AMERICAN TRADING CO., LD.

H. L. (E.) 30 R. P. C. 465

**PATENT (Infringement)—*continued.***

*Subject-matter—Sufficiency—Patent held valid and infringed.*

In 1904 a patent was granted for "improvements in acetylene storm lamps." One of the claims was for "an acetylene storm lamp wherein gas is produced at a high pressure in an acetylene generator and is caused to issue from a burner at a velocity exceeding that of the gas ignition, so that the actual flame will be situated at a distance from the burner head, substantially as hereinbefore described." In an action for infringement of the patent, the plts. alleged that it was very advantageous to ensure the separation of the flame from the burner, and so avoid the polymerization of the acetylene and the blocking up of the burner by deposited matter. It was proved that the plts.' lamp gave a powerful, steady light, and that it had been a commercial success. The defts. alleged (*inter alia*) that the plts.' lamp had been anticipated by the prior use of the "Wells Light," in which vaporized oil was burnt under pressure; that the specification was insufficient, in that it did not give sufficient directions as to the pressure to be employed; and that, if the direction was to use a pressure such that the velocity of flow from the burner should exceed the velocity of ignition, that condition had been fulfilled in every storm lamp burning acetylene or other inflammable gas with a naked flame before the date of the patent:—

*Held*, that the patentee had stated as explicitly as he could the pressure required, as it would vary with the width of the flame required; that the fact that a lamp, similar to the patentee's, had been used for burning gas or heated vapours did not prevent there being invention in using his lamp for acetylene; and that the patent was valid and had been infringed. Judgment was given for the plts. with costs. MARGRETH v. ACETYLITE LAMP CO. - - - Neville J. 30 R. P. C. 184

**Injunction.**

*Action for infringement—Motion for interlocutory injunction—Patent six years old—Evidence of user extending over four years—Interlocutory injunction granted.*

NATURAL COLOR KINEMATOGRAPH CO., LD. v. SPEER - - - Bankes J. 29 R. P. C. 669

*Action for infringement—Order by consent for injunction—Certificate of validity.*

In an action for infringement of a patent, in which the defts. denied the validity of the patent and delivered particulars of objections, at the close of the evidence of the first witness for the plt. the case was settled and an order taken for an injunction without costs. A certificate that the validity of the patent came into question was, after discussion, granted. GERHOLD v. RADNALL - - - Warrington J. 30 R. P. C. 283

*Interim injunction—Infringement—Process of manufacture—Injunction granted.*

In 1904 a patent was granted for "improvements relating to the manufacture of incandescent electric lamps." The validity of the

**PATENT (Injunction)—continued.**

patent was established in an action by *Osram Lamp Works, Ltd. v. "Z" Electric Lamp Manufacturing Co., Ltd.*, 29 R. P. C. 401, in which an injunction against infringement was granted. *Osram Lamp Works, Ltd.*, brought the present action for infringement of this and another patent against *L. S. & Co.*, who imported lamps from abroad which, it was alleged, the defendants infringed. The plaintiffs moved for an interim injunction, but the motion was only pressed as regards the 1894 patent. The defendants denied infringement, and stated that the carbon was removed from the filaments of their lamps physically and not chemically. The plaintiffs alleged that the defendants' lamps were manufactured in the same way as the lamps that were the subject of the previous action, and filed affidavits in support of this:—

*Held* that, for the purposes of the present motion, it was clearly established that the process by which the filaments of the lamps were made was in fact the same as the subject of the former litigation. An interim injunction was granted on the usual terms.

The defendants delivered no defence, and the action subsequently came on upon motion for judgment. An injunction was awarded against infringing both patents; delivery up of infringing articles and an inquiry as to damages were ordered; and costs were given to the plaintiffs as between solicitor and client. *OSRAM LAMP WORKS, LTD. v. SCHLOSS & CO.* - *Swinfen Eady J.* 30 R. P. C. 359

*Method for removing carbon from filaments of lamps—Importation of lamps alleged to be made in infringement—Motion for interlocutory injunction—Injunction granted.*

The plaintiffs, who were the owners of two patents, one for "improvements relating to the manufacture of incandescent electric lamps" and the other for an "improved method of producing metallic incandescence bodies for electric glow lamps," brought an action against the defendants for infringement of their patents, each of which consisted in a chemical process for removing carbon from the filaments of lamps. They moved for an interlocutory injunction. The defendants contended that there were other methods of removing the carbon, and that the plaintiffs in order to succeed must shew that in the defendants' filaments it had not been removed physically:—

*Held*, that on the evidence it was doubtful whether in the case of the defendants' filaments the carbon had been removed physically; and that, on the balance of convenience, an interlocutory injunction should be granted. *OSRAM LAMP WORKS, LTD. v. DAVID SMITH & CO.*

*Warrington J.* 30 R. P. C. 114

**Licence.**

*Action for royalties—Construction of licence—Lapse of patent by non-payment of fees—Implied covenant by patentee to pay fees—Dependency of covenant to pay royalties—Impossibility of performance of substantial part of contract.*

A patentee of improvements for making reinforced concrete called the Cummings system, patented in the United Kingdom, France, and Austria, respectively, granted the exclusive

**PATENT (Licence)—continued.**

right to work the patents during the full terms for which they were granted; the licensee expressly admitted the validity of the patents and agreed to pay a royalty of 2½ per cent. on the total amount included in every contract for work executed on the Cummings system, and a minimum amount of 5000 dollars each year during the continuance of the agreement. The patentee agreed to protect the patents against infringement, and to defend any proceedings brought against the licensee for the infringement of other patents. There was no provision as to payment of the renewal fees. The patentee did not pay the renewal fees on the French and Austrian patents, and they lapsed owing to the non-payment. The licensee worked the invention in England only, and without success. The licensee paid the minimum royalty at first, but declined to pay at the end of the third year, and an action was brought by the patentee to recover the amount then due. The defendant resisted the claim on the ground (1.) of want of novelty of the invention; (2.) that under the agreement the plaintiff was bound to pay the renewal fees, that, owing to his failure to pay the fees in France and Austria, the patents in those countries lapsed, and that the lapse of the patents relieved the defendant from liability to pay the royalty. The defendant counterclaimed for a declaration that the agreement was not binding, and for a return of 52l. 12s. 9d., paid under a mistake. The plaintiff contended (1.) that the agreement imposed no obligation on him to pay the fees; and (2.) that even if it did, the breach of the agreement by him in that respect was no defence to the action, but only gave a right to damages to be recovered on a counterclaim; and (3.) that as the United Kingdom patent remained valid, there was at most a partial failure of consideration, which did not release the defendant from his agreement to pay the royalty:—

*Held*—(1.) that the defence of want of novelty was not open to the defendant; (2.) that there was an implied covenant by the plaintiff to pay the renewal fees; (3.) that the covenant to pay the royalties was not an independent covenant, but dependent on the performance by the plaintiff of the implied covenant to pay the fees; (4.) that, owing to the lapse of the foreign patents, a substantial part of the subject-matter of the agreement was destroyed, and the agreement in a substantial part became impossible of performance and ceased to be binding; and (5.) that as the royalty was a fixed sum, the consideration was indivisible, and the failure of part was equivalent to failure of the entire.

*Mills v. Carson* (1892) 10 R. P. C. 9, distinguished; *Lines v. Usher* (1897) 14 R. P. C. 206, followed. *CUMMINGS v. STEWART* (No. 2) O'Connor M.R. (Ir.) [1913] 1 I. R. 95; 30 R. P. C. 1

*Agreement to advance money to meet expenses necessary to prevent infringement—Infringement stopped—No money advanced—Failure of consideration—Agreement void—Injunction.*

**PATENT (Licence)—continued.**

The plt., while in the employ of the deft. co., registered a design for a patent wreath-band, which design was subsequently infringed by another co. The plt. then entered into an agreement with his employers that, in consideration of their paying the necessary expenses to bring an action to stop this infringement, he should give them the sole right of sale, they paying him the same royalty as heretofore. No expenses were in fact incurred, but the plt. was subsequently discharged by the deft. co., and brought this action against them for an injunction to restrain them from continuing to use and sell his patent wreath-band. The defts. pleaded the agreement:—

*Held*, that as the defts. had not in fact been called upon to advance the money, the consideration for the agreement had wholly failed, and the agreement was accordingly void, and the plt. was entitled to the injunction asked for, and to an inquiry as to damages. **TEMPLEMAN v. E. COCQUEREL & SONS, LD.** - - - **Neville J. 57 S. J. 405**

*Construction of documents—Rectification—Licence not established—Rectification refused.*

The owners of letters patent for "improvements in and relating to brakes for velocipedes and other road vehicles" brought an action for infringement in which the defts. contended that they did not infringe, or, in the alternative, that they were fully licensed under the patent to make, use, exercise and vend the invention the subject thereof free of all royalties. In the further alternative the defts. pleaded that it was the intention of the parties that, by the arrangement alleged to have been embodied in a certain memorandum and in certain letters, the defts. should be licensed as aforesaid, and, in the further alternative, the defts. alleged that the plts. at all times material until the issue of the writ, and with full knowledge of all material facts, had acquiesced in the manufacture, sale, supply and use by the defts. of the articles complained of in the action, and they relied on such acquiescence and/or laches on the part of the plts. disentitling them to any relief in the action. The defts. counterclaimed for such rectification (if any) of the memorandum and/or letters as might be necessary to give effect to the intention of the parties when entering into the arrangement the subject thereof. The defts'. predecessors, the E. M. Bowden's Patents Syndicate, Ltd., in 1901 promoted the plt. co., and in that year granted them the sole and exclusive licence to use their four patents, one of which was the patent sued upon, for the purpose of the cycle brake business, but not for brakes for motor cars or other vehicles propelled wholly by mechanical power. By an indenture of the same date, which was never registered at the Patent Office, the syndicate assigned the patent sued upon to the plts. In 1903 the plts., by indorsement on the licence, surrendered to the syndicate their right under the licence in respect of brakes for cycles propelled partially by the rider's own physical force, but no reference was made to the assignment. From 1903 the syndicate or the defts. had worked under the

**PATENT (Licence)—continued.**

patent and continued to do so, to the knowledge of the plts. and without objection being raised, until Aug., 1911, when the plts. wrote to the defts. stating that no formal permission appeared to have been given to use the patent. In 1907 the defts. had executed a formal assignment of the patent to the plts. for the purpose, as was admitted, of certain proceedings at the Patent Office. This assignment was registered. It was admitted by the plts. at the hearing that the defts. must be treated as licensees of the plts. at will until Aug., 1911. The defts. sought to give evidence of the proceedings at the Patent Office, when leave to amend the specification was granted, to show that a letter had been inserted in one of the claiming clauses for the express purpose of limiting the ambit of the claim, but were not allowed to do so:—

*Held*, that the defts. had infringed both the claims of the patent; that the licence under the patent to the plts. had become merged in the assignment to them of the same date, and that the letters and memorandum relied upon by the defts. only applied to the other patents, comprised in the licence, to the exclusion of the patent sued upon; that the letters and memorandum did not amount to a licence or to an agreement to grant a licence under the patent, and that, there being no evidence of any other agreement, the Court could not consider the intention of the parties. In order to rectify a written document it must be proved that there was an agreement made between the parties that they intended to reduce that agreement into writing, and that by some mistake the writing did not represent the agreement. An injunction was awarded with costs, but the plts. were ordered to pay the costs of a motion for an interlocutory injunction.

Evidence as to the purpose for which a letter has been inserted in a claim, upon amendment of the specification of a patent, is not admissible for the purpose of construing the claim.

**BOWDEN BRAKE CO., LD. v. BOWDEN WIRE, LD. Warrington J. 30 R. P. C. 561**

*Sale by defendants of patented goods at prices below those fixed by the licence—Defence that the defendants bought the goods complained of without knowledge of the restrictions as to prices—Judgment for plaintiffs.*

The owners of a patent relating to sound records brought an action for infringement, alleging that the defts. had sold records at prices below those fixed by a licence granted by the plts. The defts. were not the licensees, but had bought goods originally supplied to a licensee. They denied that at the date of the transaction they knew of the restrictions as to prices. On an interlocutory application for an injunction they had given an undertaking, and at the trial they did not resist an injunction, and as the plts. did not ask for damages, the question was substantially as to the costs of the action:—

*Held*, that the defts. knew of the restrictions as to price; and an injunction was granted with costs. **COLUMBIA PHONOGRAPH CO. GENERAL v. REGENT FITTINGS CO.** - - - **Joyce J. 30 R. P. C. 484**

**PATENT—continue.****Particulars.**

*Particulars of breaches—Application for further and better particulars—Application dismissed—Appeal dismissed without prejudice to a further application for particulars, after discovery, if the defendants were so advised.*

ACTIENGESSELLSCHAFT FÜR ANILIN FABRIKATION IN BERLIN AND MERSEY CHEMICAL WORKS, LD. v. LEVINSTEIN, LD. - C. A.

29 R. P. C. 677

**Patent Agent.**

*Description by unregistered person—Offence—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 84.*

The Patents and Designs Act, 1907, s. 84, sub-s. 1, provides that a person shall not be entitled to describe himself as a patent agent, unless he is registered as a patent agent.

The respondent, who was not a registered patent agent, issued a circular in which his firm were described as "experts and engineers," and in which it was stated in effect that the firm were prepared to do the class of work which is usually done by patent agents, but the circular did not in terms state that the firm were patent agents:—

*Held*, that the respondent had not described himself as a patent agent. **GRAHAM v. TANNER** Div. Ct. [1913] 1 K. B. 17; 82 L. J. (K. B.) 119; 23 Cox, C. C. 217; 29 R. P. C. 683; 107 L. T. 681; 77 J. P. 35

*Wrongful description as—Right of Chartered, Institute of Patent Agents to prosecute—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 84—Scottish practice—Interpretation of "exclusively" in sub-s. 4—Agent for obtaining patents in United Kingdom and abroad.*

On a complaint made by the Chartered Institute of Patent Agents and their secretary with the concurrence of the Procurator-Fiscal Joseph Lockwood, of Glasgow, was convicted in the sheriff court of Lanarkshire of wrongfully describing himself as a patent agent in contravention of s. 84 of the Patents and Designs Act, 1907, and a fine of 7*l.* was imposed with 3*l.* as expenses. The complaint was based upon certain letters, all of which were headed "British and Foreign. Joseph Lockwood, Patent, Design and Trade Mark Agent." Lockwood presented a bill of suspension and liberation against the conviction to the High Court of Justiciary in Scotland. It was contended on behalf of Lockwood (*inter alia*) that the Chartered Institute had no title or interest to prosecute, and that the prosecution was one in the public interest which ought to have been instituted by the Procurator-Fiscal. Secondly, that Lockwood was not holding himself out as a patent agent within the meaning of s. 84, because, as he stated, he was not exclusively an agent for obtaining patents in the United Kingdom:—

*Held*, (1.) that the Chartered Institute of Patent Agents and their secretary, being entitled to keep a register of patent agents and to charge fees therefor, had an interest sufficient to entitle them, with the concurrence of the Procurator-Fiscal, to prosecute in Scotland a person who had

**PATENT (Patent Agent)—continued.**

described himself in that country as a "patent agent" in contravention of s. 84 of the Patents, &c., Act, 1907. (2.) That Lockwood had described himself as a "patent agent" within the section, although he did not confine himself exclusively to obtaining patents in the United Kingdom. The bill of suspension was refused. **LOCKWOOD v. CHARTERED INSTITUTE OF PATENT AGENTS** Ct. Just. (Sc.) 30 R. P. C. 108

**Revocation.**

*Invention claimed in prior specification—Application dismissed by comptroller—Appeal to the Court dismissed—Patents and Designs Act, 1907 (7 Edw. 7, c. 19), s. 26.*

An application was made by B. under s. 26 of the Patents and Designs Act, 1907, to revoke a patent granted to C. (No. 21,754 of 1911) for "Improvements in measuring taps for casks, barrels, urns, bottles and the like" on the ground that the invention was fully claimed in the applicant's specification of patent (No. 19,751 of 1909) for an "Improved measuring spirit tap." The comptroller dismissed the application on the ground that C.'s apparatus differed from the applicant's. The applicant appealed to the Court:—

*Held*, that C.'s invention was not claimed in B.'s specification. The appeal was accordingly dismissed. *In re CHAMBERS' PATENT* (No. 21,754 of 1911) - Warrington J. 30 R. P. C. 367

**Specification.****Amendment.**

*Application by plaintiff to amend specification by way of disclaimer—Application allowed on terms—Patents and Designs Act, 1907, s. 22.*

**LILLEY v. ARTISTIC NOVELTIES, LD.**

Neville J. 30 R. P. C. 18

*Motion for leave to amend specification—Disclaimer—Leave to proceed granted—Application to amend refused—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 22.*

The owners of a patent for "A new or improved process for the manufacture of combs from celluloid," who were the plts. in an action for infringement, applied under s. 22 of the Patents and Designs Act, 1907, for liberty to amend the specification by way of disclaimer. Parker J. gave liberty to proceed, the order, being in the same form as in *Gillette Safety Razor Co. v. Luna Safety Razor Co., Ltd.* 27 R. P. C. at p. 528. The application was heard by Warrington J. The specification, as originally framed, stated that it was not necessary to form the blank into the shape approximately of the finished comb, and the amendment sought to exclude that shape, and to make an essential part of the invention what had been previously described as merely an advantage. The defts. contended that this in effect was not disclaimer but an alteration of the patent:—

*Held* by Warrington J., that the real effect of the amendment, though in one sense disclaimer, was to render definite a claim which was previously indefinite, and that it was sought by the amendment to claim an invention, which was not claimed by the specification as originally

**PATENT (Specification)—continued.**

framed. The application was refused with costs. *RHEINISCHE GUMMI UND CELLULOID FABRIK v. BRITISH XYLONITE CO., LD.* Warrington J. 29 R. F. C. 672

**Claims.**

See above, **Infringement.**

**Novelty.**

See above, **Infringement.**

**Subject Matter.**

See above, **Infringement.**

**Threats Action.**

*Cross-action for infringement — Staying threats action pending decision of infringement action—Costs—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 36.*

In Feb., 1911, the plts. ascertained that the defts. were issuing threats with reference to the alleged infringement of their patent. On Feb. 14, 1911, they wrote to the defts. with reference to the threats. On Mar. 31, 1911, they issued their writ in the present action, and on Apr. 13, 1911, gave notice of motion for an injunction to restrain the issue of the threats. On Apr. 21, 1911, the defts. issued their writ against the plts. for an infringement of their patent. On Apr. 25, 1911, the motion in the threats action came on for hearing, and by consent the action was stayed pending the result of the action for infringement, the costs being reserved, with liberty to apply. On Dec. 14, 1911, judgment was given in the infringement action dismissing the action, and that judgment was subsequently affirmed by the C. A. On an application by the first plts. that their action might be dismissed, but without costs:—

*Held*, that the plts. had adopted a proper course with a view of saving expense by staying their action pending the decision of the infringement action and not putting the defts. to the expense of proving that they had complied with the proviso to s. 36 of the Patents and Designs Act, 1907, and that they were therefore entitled to have their action dismissed without costs. *METROPOLITAN GAS METERS, LD. v. BRITISH, FOREIGN AND COLONIAL AUTOMATIC LIGHT CONTROLLING CO.* Warrington J. [1913] 1 Ch. 150; 82 L. J. (Ch.) 74; 29 R. P. C. 680; 108 L. T. 151; [1912] W. N. 277; 57 S. J. 129

**PATENT AGENT**—Description by unregistered person—Offence.

See **PATENT**—**Patent Agent.**

**PAUPER**—Application by defendant for leave to appear in forma pauperis.  
See **APPEAL**—**Divisional Court.**

— **Settlement.**

See **POOR LAW.**

**PAYMENT INTO COURT**—*Discontinuance — Costs—Denial of liability—Jurisdiction—Discretion—R. S. C., 1883, Order XXII., r. 6 (e); Order XXVI., r. 1.*

The plt., who sued as executor of a testator, commenced an action in June, 1911, and claimed

**PAYMENT INTO COURT—continued.**

an injunction to restrain the defts. from discharging any effluent drainage from their works into a dyke surrounding the testator's land.

On Mar. 14, 1912, the defts. delivered their defence, having on Mar. 12 paid 10*l.* into Court with denial of liability. The plt. did not take the 10*l.*, but proceeded with the action and applied for discovery and inspection.

The defts. incurred considerable expense in preparing for the trial, and on May 6, 1913, applied to the Master to dismiss the action for want of prosecution.

On May 9, 1913, the plt. applied by this summons for liberty to discontinue the action, or, alternatively, that all proceedings in the action might be stayed upon the terms, in either case, that the sum of 10*l.* brought into Court by the defts. might be paid out to the plt. and that each party should bear their own costs of the action.

Eve J. said that if the plt. had elected under Order XXII., r. 6 (b), to take the money paid into Court in satisfaction of his claim, he would have been entitled to his costs down to the date of payment in. But as he had elected to continue the action, the money paid into Court could only be paid out in pursuance of an order of the Court. There was no jurisdiction under Order XXVI., r. 1, to make it a term that the money might be paid out to the plt. on his deciding to discontinue the action. The fact of the payment in must be considered in dealing with the costs of the action but did not fetter the discretion of the Court under Order XXVI.: *M'Iwraith v. Green* (1884) 13 Q. B. D. 887, affirmed on appeal, 14 Q. B. D. 766, and *Musman v. Boret* (1892) 40 W. R. 352. His Lordship therefore thought that, in the exercise of his discretion, he ought to make no order as to costs down to Mar. 12, 1912, the date of the payment in, and the plt. would be ordered to pay the costs of the action from that date.

*DOYLE v. BRIGHTLINGSEA U. D. C.* Eve J. [1913] W. N. 244

**PAYMENT OUT OF COURT—Lands Clauses Acts**

—**Costs**—Petition for payment out by trustees for purposes of Settled Land Acts—Separate appearance of tenant for life.

See **LANDS CLAUSES ACTS.**

**PEAT**—Foreclosure proceedings—Licence by mortgagee to work peat—Jurisdiction of Court to sanction.

See **MORTGAGE**—**Foreclosure.**

**PENAL ACTION.**

See **AMENDMENT** and **PARLIAMENT**—**Disqualification.**

**PENAL SERVITUDE**—Holder of licence—Forfeiture of licence.

See **CRIMINAL LAW**—**Sentence.**

**PENAL SERVITUDE ACT, 1864, ss. 4, 9.**

See **CRIMINAL LAW**—**Sentence.**

**PENALTIES**—Penalties for sitting and voting, Action for—Penal statute—Affidavit by informer that offence was committed in

**PENALTIES**—*continued.*

county where action brought—Necessity  
for—21 Jac. 1, c. 4, s. 3—House of  
Commons (Disqualification) Act, 1782  
(22 Geo. 3, c. 45), s. 9.  
*See* PARLIAMENT.

— House of Commons—Disqualification—Con-  
tract on account of public service—  
Action for penalties.  
*See* PARLIAMENT.

**PENSIONS**—Proofs—Voluntary allowance—  
Ultra vires—Building society—Wind-  
ing-up.  
*See* BUILDING SOCIETY—Winding-up.

**PENSIONS, OLD AGE.**

*See* LOCAL GOVERNMENT—County  
Council.

**PERPETUITIES**—Rule against—Devise—Trust  
to convey to uses subsisting in another  
estate at death of tenant for life.  
*See* WILL.

**PETROLEUM SPIRIT**—“Storehouse” for—  
Motor cars—Stable and loft converted into  
garage and living rooms—Cars housed in garage  
with petrol in their tanks—Regulations of  
Secretary of State, July 31, 1907—Statutory  
Rules and Orders, 1907, No. 614.

The respondent had converted a former  
stable and loft into a motor garage with dwell-  
ing rooms over it, in which the caretaker and  
family resided. The intervening floor between  
the garage and rooms above was unsubstantial  
and of inflammable material. Three motor  
cars were housed in the garage at night with  
their tanks more or less full of petroleum  
spirit:—

*Held*, that the garage was being used as  
a storehouse for petroleum spirit in contra-  
vention of Regulation 4 of the Regulations  
of the Secretary of State of July 31, 1907,  
which precluded such a building from being  
used as a dwelling. The petroleum spirit was  
none the less “stored” there, because it hap-  
pened to be at large in the tanks of the motor  
cars and not securely sealed in cans. *APPLE-  
YARD v. BANGHAM* - Div. Ct. 11 L. G. R. 1220;  
[1913] W. N. 300; 77 J. P. 448; 30 T. L. R. 13

**PIERS, DOCKS AND HARBOURS CLAUSES  
ACT, 1847.**

*See* DOCKS.

**PILOT**—Negligence of—Limitation of pilot's  
liability.  
*See* SHIPPING—Pilot.

**PILOTAGE**—Ship—Collision—Compulsory  
pilotage.

*See* SHIPPING—Collision.

**PLAINTIFFS**—Joinder.

*See* PARTIES.

**PLAN**—Conveyance—Parcels—Falsa demon-  
stration.

*See* VENDOR AND PURCHASER.

**PLATE GLASS**—Insurance.

*See* INSURANCE (PLATE GLASS).

**PLEADING**—Amendment.

*See* AMENDMENT.

— County court.

*See* COUNTY COURT.

— Divorce.

*See* DIVORCE.

— Illegality—Not pleaded.

*See* RESTRAINT OF TRADE.

*Local government—Way, Right of—Action by  
landowner for trespass—Resolution of district  
council to defend action—District council added  
as defendants—Pleadings—“Neither claim nor  
deny”—Motion to strike out defence of district  
council as embarrassing—R. S. C., Order XIX.,  
r. 27—Local Government Act, 1894 (56 & 57 Vict.  
c. 73), s. 26, sub-ss. 1, 5.*

The plt. claimed a declaration of title and an  
injunction to restrain certain persons from tres-  
passing on his lands, and they pleaded a public  
right of footway over his lands. The dis-  
trict council then passed a resolution under  
s. 3 of the Local Government Act, 1894, to  
defend the action. Thereupon the plt. added  
them as co-defts. and by his amended state-  
ment of claim alleged that they threatened and  
intended to exercise the alleged right of way.  
The district council, with the view of avoiding  
liability for the costs of the action, by their  
defence denied that they threatened or intended  
to exercise the right of way and pleaded that  
they neither asserted nor denied the existence of  
the right of way:—

*Held* by Neville J. and by the C. A., that  
this defence did not infringe any rule of pleading  
and was not embarrassing, and the liability (if  
any) of the district council for costs would be  
determined at the trial of the action. *THORN-  
HILL v. WEEKS* (No. 2) - C. A. [1913] 2 Ch.  
464; 82 L. J. (Ch) 485; 11 L. G. R. 1182;  
109 L. T. 146; [1913] W. N. 220

— Public Authorities Protection Act.

*See* AMENDMENT.

**PLEDGE**—Agent.

*See* PRINCIPAL AND AGENT.

— Executor—Power to pledge personal chattels

—Pledge by one of two executors and  
trustees—Validity.

*See* EXECUTOR.

— General lien—Goods in cold store—Pledge of  
bills of lading—Exercise of lien against  
holder of bills of lading.

*See* LIEN.

**POISON**—Order in Council, Oct. 11, 1912. 11  
L. G. R. Orders, 136.

**POLICY**—Insurance.

*See* INSURANCE.

**POLL**—Company—Poll—Adjournment ad hoc—  
No adjournment of meeting—Validity  
of proxies lodged forty-eight hours  
before poll.

*See* COMPANY—Meeting.



**POOR LAW.**

*The Casual Paupers Order, 1913, 11 L. G. R. Orders, p. 31.*

*Husband and Wife. See JUSTICES—Husband and Wife.*

*Lunatic. See below, Settlement.*

*Officers, col. 471.*

*Pauper. See below, Settlement.*

*Settlement, col. 471.*

**Husband and Wife.**

— Separation order by justices—Duty of husband to maintain children.

*See JUSTICES—Husband and Wife.*

**Lunatic.**

*See below, Settlement.*

**Officers.**

*Board of guardians—Dismissal of assistant officers without notice—Assistant matron—General Consolidated (Unions) Order, July 24, 1847, arts. 187, 188.*

By art. 187 of the General Consolidated (Unions) Order of July 24, 1847, made under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), every officer appointed to or holding any office under the order, other than a medical officer, shall continue to hold the same until he die, or resign, or be removed by the Commrs. (now the Local Government Board): and by art. 188 every porter, nurse, assistant, or servant may be dismissed by the guardians without the consent of the Commrs.

The guardians of B. Union dismissed an assistant matron without previous notice, and she brought an action against them to recover three months' salary:—

*Held*, that art. 188 gave the guardians an absolute right of dismissal in respect of assistant officers which they could exercise without previous notice to the person dismissed, and that the action must fail.

*McGuigan v. Guardians of Belfast Union* (1885) 18 L. R. Ir. 89, followed. *LLOYD v. BERMONDSEY GUARDIANS Lord Alverstone C.J.*

11 L. G. R. 751; 108 L. T. 716:  
77 J. P. 72; 28 T. L. R. 84

**Pauper.**

*See below, Settlement.*

**Settlement.**

*Child under sixteen years—Irremovability—Residence—Father receiving poor law relief—Poor Removal Act, 1846 (9 & 10 Vict. c. 66), ss. 1, 3—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 34.*

A child under the age of sixteen years living for three years with its father in a parish from which the father is irremovable may acquire a settlement in that parish under s. 34 of the Divided Parishes and Poor Law Amendment Act, 1876, notwithstanding that the father through having received poor law relief may be disquali-

**POOR LAW (Settlement)—continued.**

fied from acquiring a settlement in the same parish.

*Hackney Union v. Kingston-upon-Hull Incorporation for the Poor* [1912] A. C. 475, followed and applied. *TEWKESBURY UNION v. UPTON-ON-SEVERN UNION.* Div. Ct. [1913]

3 K. B. 475; 10 L. G. R. 1019; 109 L. T. 557; 77 J. P. 9

*Deserted wife—Irremovability—Pauper—Acquisition of settlement by residence—Poor Removal Act, 1861 (24 & 25 Vict. c. 55), s. 3—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 34, 35.*

A deserted wife can, under s. 34 of the Divided Parishes and Poor Law Amendment Act, 1876, acquire a settlement by residence in a parish for three years in such manner and under such circumstances in each of those years as would render her irremovable therefrom.

Decision of the Div. Ct. [1912] 2 K. B. 335, affirmed. *PADDINGTON GUARDIANS v. ST. MATTHEW, BETHNAL GREEN, GUARDIANS*

C. A. [1913] 1 K. B. 508; 107 L. T. 841;  
[1912] W. N. 283; 77 J. P. 113; 29  
T. L. R. 114; 57 S. J. 171

*Lunatic—Adjudication of settlement—Irremovability—Computation of period of residence—Meaning of “confined as a patient in a hospital”—Inmate of Nazareth House—Poor Removal Act, 1846 (9 & 10 Vict. c. 66), s. 1—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 34.*

The main object of an institution in the parish of L. in the L. Union, called Nazareth House and supported by voluntary contributions, was to provide a home for the education and training for service of orphan and deserted Roman Catholic children, and a refuge for the aged and deserving poor; but adults between the ages of 16 and 60, whose cases were suitable, were occasionally admitted as inmates. Inmates were medically treated and nursed there, if occasion arose, and incurable persons were received; but such persons were admitted, not on account of their complaints, but because of other qualifications.

An unmarried woman, 34 years of age, who had acquired a settlement by residence in the parish of S. in the O. Union, was received into the institution on Mar. 6, 1905. She was of weak intellect and quarrelsome, and at that time was unable to obtain an ordinary situation, and was destitute. During her residence in the institution she gradually grew worse in health and mind; and ultimately becoming violent and dangerous, she was, on May 24, 1911, sent to the county lunatic asylum as a pauper lunatic. An order adjudicating her settlement to be in the parish of S. was appealed against by the guardians of the O. Union on the ground that by reason of her residence at Nazareth House she had become irremovable from and settled in the parish of L. And on a case stated by consent under the Quarter Sessions Act, 1847, it was

*Held*, that the institution was not a “hospital,” nor was the pauper lunatic, during her residence there, “confined as a patient in a hospital”

**POOR LAW (Settlement)**—*continued.*

within the meaning of s. 1 of the Poor Removal Act, 1846, so as to prevent the period of her residence there from being computed in determining whether she had acquired a status of irremovability from a settlement in the parish of L.; and the appeal against the order of adjudication was allowed accordingly. **ORMSKIRK UNION v. LANCASTER UNION** - - Div. Ct. 10 L. G. R. 1041; 107 L. T. 620; [1912] W. N. 264; 77 J. P. 45

**POOR RATE.**

See **RATES.**

**PORT OF LONDON ACT, 1908.**

See **LONDON**—Port of London.

**PORTIONS**—Vesting—Younger children—"Eldest or only son"—Younger son becoming eldest after vesting of portion—Right to share in portions fund.  
See **SETTLEMENT.**

**POSTMASTER-GENERAL.**

See **TELEGRAPH AND TELEPHONE.**

**POST OFFICE**—National Insurance Regulations, 1912—Agency of Post Office to receive return of cards.

See **INSURANCE**—National.

**POSTHUMOUS ILLEGITIMATE CHILD**—Workmen's compensation—Dependant—Evidence—Promise to marry—Intention to maintain.  
See **WORKMEN'S COMPENSATION**—Dependants.

**POSTPONEMENT**—Conversion.

See **CONVERSION.**

**POULTRY FOOD**—Article artificially prepared—Invoice.  
See **ADULTERATION.**

**POWER OF APPOINTMENT**—Advances to appointees—Release of life interest in advances—Whether life interest forfeited.  
See **SETTLEMENT.**

—Aggregation of estates—New South Wales Stamp Duties (Amendment) Act, 1904, s. 21.  
See **AUSTRALIA.**

—Divorce—Variation of settlement—No power of appointment in favour of petitioner's future wife and children of future marriage—Interest of child of dissolved marriage.  
See **DIVORCE.**

*Excessive exercise—Contingent class—Objects—Non-objects—Ascertainment of future period—Construction of will.*

J. W. by her will gave to her daughter E. R. a power to appoint funds "in favour of all . . . or any one or more of the child or children or other issue or both of my said daughter E. R. as may be living at her death." E. R. by her will appointed that the funds should be held in trust for her children who should attain twenty-one

**POWER OF APPOINTMENT**—*continued.*

or marry in equal shares. She then directed the trustees to retain the shares of each of her daughters and pay the income to her for life for her separate use without power of anticipation and after the decease of such daughter in trust for her children or remoter issue (such remoter issue being born in her lifetime) in such manner as she should by deed or will appoint; and in default of appointment for the daughter's children who should attain twenty-one or marry.

J. W. died in 1888. D. R. died in 1911, leaving eight children. One of her daughters, who was born before the death of J. W. and had four children, all born before the death of E. R., was the plt., and she claimed that the settlement of the share appointed to her was void, inasmuch as it might apply to non-objects of the power; that the original appointment in her favour was therefore not cut down; and that she took the share absolutely:—

*Held* (affirming the decision of Warrington J.), that the provisions for a settlement were only void, so far as they might apply to non-objects of the power, and that this must be ascertained at the death of the plt. The law on the point was settled by *Sadler v. Pratt* (1833) 5 Sim. 632, *Harvey v. Stracey* (1852) 1 Drew. 73, and *In re Farncombe's Trusts* (1878) 9 Ch. D. 652, and was no longer open to discussion. *In re Witty. Wright v. Robinson* - C. A. [1913] 2 Ch. 666; 109 L. T. 590; [1913] W. N. 295; 58 S. J. 30

—Power to appoint money—Will—Trusts referring to settlement trusts—Power to appoint similar sum—Covenant to settle after-acquired property.  
See **SETTLEMENT.**

—Settlement—Settled land—Title—Sale—Compound settlement—Trustees.  
See **SETTLED LAND**—Trustees.

*Special and general power over same property—Exercise of special power—Will.*

In order to exercise a special power of appointment there must be a sufficient expression or indication of intention in the will or other instrument alleged to exercise it; and either a reference to the power or a reference to the property subject to the power constitutes in general a sufficient indication for the purpose. Where, however, two powers exist in reference to the same property, it may well be that a reference to the property will not indicate any intention to exercise more than one of the powers.

Testatrix, by her will proved in 1909, gave one moiety of her residuary estate in trust for her daughter, with a direction that the income thereof was to be held in trust for her daughter during her life, and after her death the capital thereof was to be held, subject to the appointment of any life interest to any future husband of the daughter as thereafter mentioned, upon trust for the children of the daughter living at her death who being sons should attain twenty-one, or being daughters should attain that age or marry, with a provision that if no child should attain a vested

**POWER OF APPOINTMENT**—*continued.*

interest; the share should be held in trust absolutely for such persons as the daughter should by will appoint, and in default of appointment for the testatrix's son; and the testatrix thereby empowered her daughter by deed or will to appoint for the benefit of any future husband who might survive her during his life or any less period all or any part of the income of her share.

The daughter's first husband died in 1910, the only issue of that marriage being a daughter, who was born in 1898. In the year 1910 the testatrix's daughter married A. C., her second husband. She died in 1912, having made a will whereby she appointed A. C. guardian of her infant daughter and proceeded: "I give, devise, appoint and bequeath, all my estate, property and effects, whatsoever and wheresoever, both real and personal, which I have power to dispose of by my will, to my said husband, A. C., absolutely, and I appoint A. C. sole executor of this my will":—

*Held*, that the daughter's will executed the special power of appointing the income of her share in favour of her second husband during his life. *In re ACKERLEY*. CHAPMAN v. ANDREW - Sargant J. [1913] 1 Ch. 510; 82 L. J. (Ch.) 260; 108 L. T. 712; [1913] W. N. 91

*Will*—Special power of appointment—Change of investment—Ademption of appointed share.

A testatrix had under her marriage settlement a life interest in 900*l.* Government 3 per cent. Irish Consolidated Annuities, with power to appoint the same to her children. At the date of her will the annuities had been sold, and the proceeds invested in New Zealand bonds.

By her will, after reciting that she was possessed of New Zealand bonds, amounting to the sum of 900*l.* or thereabouts, and bank and other shares, she bequeathed the New Zealand bonds and the shares to her daughter, not referring in any way to the settlement. The New Zealand bonds were afterwards sold, and the proceeds invested in Consols, and so remained at the date of her death:—

*Held*, that the will was an appointment of the New Zealand bonds only, and that, as they had ceased to form part of the trust funds at the death of the testatrix, when the will operated, the appointment failed, and the trust fund went as in default of appointment. *In re BRAZIER CREAGH'S TRUSTS*. HOLMES v. LANGLEY - O'Connor M.R. (Ir.) [1913] 1 I. R. 232

**POWER OF ATTORNEY.**

*See* GIFT and PARTIES.

**PRACTICE.**

**Amendment.**

*See* AMENDMENT.

**Appeal.**

*See* APPEAL.

**Costs.**

*See* COSTS.

**PRACTICE**—*continued.*

**County Court.**

*See* COUNTY COURT.

**Discovery.**

*See* DISCOVERY.

**Divorce.**

*See* DIVORCE.

**Evidence.**

*See* EVIDENCE.

**Interrogatories.**

*See* DISCOVERY.

**Judgment.**

*See* JUDGMENT.

**Jury.**

*See* JURY.

**Motions.**

*See* SERVICE—Motions.

**Particulars.**

*See* PARTICULARS.

**Parties.**

*See* PARTIES.

**Patent.**

*See* PATENT.

**Pleading.**

*See* PLEADING.

**Service.**

*See* SERVICE.

**Writ.**

*See* SERVICE and WRIT.

**PREFERENCE**—Bankruptcy.

*See* BANKRUPTCY — Fraudulent Preference.

**PREFERENTIAL CLAIM**—Company—Receiver and manager—Appointment by debenture-holders—Notice of preferential claim—Subsequent payments to ordinary creditors in carrying on business—Loss of assets—Liability to preferential creditor.

*See* COMPANY—Debentures.

— Company — Winding-up — Director—"Servants"—Articles of association.  
*See* COMPANY—WINDING-UP.

**PREMIUM**—Income tax—Deductions—Premium on life insurance.  
*See* REVENUE—Income Tax.

— Policies on life of *c'estui que vie*—Premiums, whether payable out of capital—Tenant for life and remainderman.  
*See* CONVERSION.

**PRESUMPTION**—Land tax—Redemption—Exoneration—Land abutting on highway—Presumption that soil of highway passes ad medium flum.

See **LAND TAX**.

— Market—Charter days—Streets subject to market rights—Presumption of lost grant—Easement—Dedication subject to obstruction.

See **MARKET**.

— Water—Artificial watercourse—Mill stream—Riparian proprietor—Common owner—Easement—Presumption from user—General words.

See **WATER**.

## **PREVENTION OF CRIME ACT, 1908.**

See **CRIMINAL LAW**—Vagrancy.

## **PRINCIPAL AND AGENT.**

*Authority of Agent, col. 477.*

*Brokerage. See below, Commission.*

*Commission, col. 479.*

*Del Credere Agent, col. 479.*

*Determination of Agency, col. 480.*

*Fraud of Agent, col. 480.*

*Indemnity of Agent, col. 480.*

*Knowledge of Agent. See INSURANCE—Live Stock.*

*Money Paid under Mistake. See TITHE RENT-CHARGE.*

*Necessity, Agent of. See RAILWAY.*

*Negligence of Agent, col. 481.*

*Option to Purchase. See VENDOR AND PURCHASER.*

*Stockbroker. See STOCK EXCHANGE.*

### **Authority of Agent.**

*Borrowing, col. 478.*

*Pledge, col. 478.*

*Purchase on Credit, col. 478.*

### *Borrowing.*

*Money borrowed by managing director of a company on its behalf—Absence of authority to borrow—Debts of company paid with money borrowed—Knowledge by lender of absence of authority—Equitable right of lender to recover.*

The managing director of the deft. co. was, by the terms of his appointment, prohibited from borrowing money on behalf of the co., unless specially authorized so to do by the co. Without authority from the deft. co., he borrowed money on its behalf from the plt. co., which money he applied in discharging existing legal debts of the deft. co. The plt. co. knew through its officers, when the advance was made, that the managing director of the deft. co. had no authority to borrow on its behalf:—

*Held* (reversing the judgment of Scrutton J.) by Buckley L.J. and Kennedy L.J., Vaughan Williams L.J. dissenting, that the plt. co. was entitled to recover from the deft. co. the amount

## **PRINCIPAL AND AGENT (Authority of Agent)** —continued.

advanced notwithstanding its knowledge as before mentioned.

*Bannatyne v. MacIver* [1906] 1 K. B. 103, commented upon and explained.

*REVERSION FUND AND INSURANCE CO. v. MAISON COSWAY, LD.* - - C. A. [1913] 1 K. B. 364; 82 L. J. (K. B.) 512; 20 Mans. 194; 108 L. T. 87; 57 S. J. 144

### *Pledge.*

*Agent in Paris for principal in London—Agent not acting in good faith—Title of principal—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 2.*

The plts., who were dealers in precious stones, carrying on business in Paris, handed certain pearls to A. in Paris in consequence of a statement made by him to them to the effect that he knew of a special merchant who would be likely to give a good price for them. A. signed the following receipt: "Intrusted by J. & Co., the following goods to be sold for cash which I promise to return on the first demand, and not to give them to any one without their written authority. . . . In case of loss I will pay the full value of the goods. The house reserve to themselves the right of delivering the goods."

A. pawned the goods at a Government pawn-broking establishment, and subsequently pledged them with M., who was the deft.'s representative in Paris, who sent them to the deft. in London. The plts. brought an action to recover the pearls or their value from the deft., in the course of which Bray J. found as facts (a) that A. from the outset of the transaction intended to misappropriate the pearls; and (b) that M. had not acted in good faith. Bray J. held (1.) that whether the case depended on English or French law, the deft. obtained no title to the pearls, as his agent M. had not acted in good faith; and (2.) that A. had obtained the pearls from the plts. by larceny or by a trick in English law, or *vol* in French law, and therefore he did not obtain possession of the pearls with the plts.' consent; and (3.) that A. was not a mercantile agent within the meaning of the Factors Acts:—

*Held*, that as M. was either the agent of the deft., or a joint speculator with him, and as M. had not acted in good faith, the plts. were entitled to recover.

Decision of Bray J., 108 L. T. 214, affirmed. *MEHTA AND ANOTHER v. SUTTON* C. A. 109 L. T. 529; 30 T. L. R. 17; 58 S. J. 29

### *Purchase on Credit.*

*Agency—Joint liability of principal and agent—Purchases on credit—Evidence of authority—Misdirection.*

P. O. purchased a number of sheep from R. in a market, and gave a bill for the price of the same; he resided with his mother, B. O., on her farm, and there was some evidence that he was in the habit of buying and selling cattle for her, but there was no evidence that he had on any previous occasion purchased on credit as her agent. The bill was dishonoured on maturity, and R. thereupon sued P. O. and his mother for the price of the sheep. On the evidence aforesaid the jury found that this

**PRINCIPAL AND AGENT (Authority of Agent)**

—continued.

particular purchase, which was on credit, was made by P. O. on behalf of his mother, B. O., and with her authority; and further, that the parties intended that P. O. himself should also be liable, and awarded to the plt. the full sum claimed. The jury found a verdict for the plt. against both defts. for the said sum, the judge declining to direct in favour of B. O. though required so to do by her counsel:—

*Held*, that, on these facts, the verdict entered against B. O. should be set aside, and a verdict entered for her. **RUTHERFORD v. OUNAN AND ANOTHER** - Div. Ct. (Ir.) [1913] 2 I. R. 265

**Brokerage.**See below, **Commission.****Commission.**

*Insurance brokerage*—“*Net*” premiums—*Discount and special rebate received by broker—Right of principal to recover.*

The plts. employed the defts., who were insurance brokers, to effect marine insurances, and the defts. rendered to the plts. an account which stated that the premiums payable by the plts. were at “net” rate, whereas the amount paid by the defts. to the underwriters was the gross amount of premium less 5 per cent. commission, and less a further discount of 10 per cent. In the case of two large insurances the defts. got a special rebate of 25 per cent. from the insurance cos. The plts. brought an action against the defts. to recover the 5 per cent. commission, the 10 per cent. brokerage, and the 25 per cent. special rebate. According to the plts., when “net” premiums were quoted, they were only subject to a deduction of 5 per cent.

*Held*, that though in an ordinary case the defts. would be entitled to retain the commission of 5 per cent., yet that if a broker represented to his principal that the premiums charged to the principal were subject only to a deduction of 5 per cent. commission, the broker was not entitled to retain an additional 10 per cent. as discount, and that the same rule applied to the 25 per cent. special rebate, and that as an agent could not retain a commission which he had obtained by acting dishonestly towards his principal, the plts. were entitled to recover the full amount claimed. **E. GREEN & SON, LD. v. G. TUGHAN & CO.** - Pickford J. 30 T. L. R. 64

**Del Credere Agent.**

*Dispute between buyer and seller—Extent of agent's liability.*

The obligation of a del credere agent does not extend beyond a liability to pay the seller, when there is an ascertained amount due from the buyer to the seller and the buyer, whether from insolvency or otherwise, fails to pay the seller, and the obligation does not extend so far as to make the del credere agent liable to litigate disputes between the buyer and the seller. **GABRIEL & SONS v. CHURCHILL & SIM**

Pickford J. 30 T. L. R. 90

**PRINCIPAL AND AGENT—continued.****Determination of Agency.**

*Commission note—Agreement with firm as agents and business managers—Dissolution of firm.*

The deft. in Aug., 1911, gave a commission note to S. and R., who were in partnership as theatrical agents, authorizing them to act as her agents and business managers for five years with the option of a further five years, and agreeing to pay a commission of 10 per cent. on all salaried work undertaken by her. S. and R. dissolved partnership in July, 1912:—

*Held*, that the commission note did not entitle them to claim commission in respect of engagements on salaries obtained by the deft. after the dissolution of their partnership. **SALES AND ANOTHER v. CRISPI**

Horridge J. 29 T. L. R. 491

**Fraud of Agent.**

— Pledge.

See above, **Authority of Agent.**

*Liability of principal for fraud of agent.*

**LLOYD v. GRACE, SMITH & CO.** - H. L. (E.)

[1912] A. C. 716; 81 L. J. (K. B.) 1140;

107 L. T. 531; [1912] W. N. 213; 28

T. L. R. 547; 56 S. J. 723

**Indemnity of Agent.**

*Liability of principal to indemnify agent—Solicitor and client costs.*

Llewellyn Brothers, the third parties, let some furniture to the plt. under a hire-purchase agreement, under which they had the right to retake possession of the goods in the event of the hirer making default. The hirer made default, and Llewellyn Brothers wrote to the defts., a firm of auctioneers, instructing them to seize the furniture at the plt.'s house. This the defts. did. The plt. brought an action against the defts. for wrongfully seizing and detaining the furniture. The defts. in their defence denied the commission of any unlawful act, and further pleaded that in seizing the furniture they were acting as agents for and on behalf of Llewellyn Brothers. Eventually Llewellyn Brothers were added as third parties, and the defts. claimed to be indemnified by them. In the end the plt.'s action was dismissed for want of prosecution. A summons was taken out by the defts. calling (inter alia) upon Llewellyn Brothers to shew cause why they should not pay the defts. their costs of the action, taxed as between solicitor and client, which summons was referred by the district registrar at Birkenhead to the judge in chambers.

Bailhache J. declined to make any order against Llewellyn Brothers.

The defts. appealed.

The C. A. reversed the order of Bailhache J., holding that the case fell within the rule that an indemnity at common law arises, where an agent is injured in carrying out his principal's instructions, because he has carried them out. The defts. were entitled to be indemnified by the

**PRINCIPAL AND AGENT (Indemnity of Agent)**

—continued.

third parties, their principals, and party and party costs would not be an indemnity.

*Hallbronn v. International Horse Agency and Exchange, Ltd.*, [1903] 1 K. B. 270, questioned.  
**WILLIAMS v. LISTER & CO., LLEWELLYN BROTHERS, THIRD PARTIES** C. A. [1912] W. N. 295

See **STOCK EXCHANGE**.

**Knowledge of Agent.**

See **INSURANCE—Live Stock**.

**Money Paid under Mistake.**

— Right to recover.—Tithe.—Payment by bishop to trustee in bankruptcy.  
 See **TITHE RENT-CHARGE**.

**Necessity, Agent of.**

See **RAILWAY—Carriage of Goods**.

**Negligence of Agent.**

*Negligent driving of a motor car—Retention of control by the owner—Appeal from New Zealand—Control of carriage—Permission of owner.*

**SAMSON v. AITCHISON** P. C. [1912]  
 A. C. 844; 82 L. J. (P. C.) 1; 107 L. T. 105;  
 28 T. L. R. 559

**Option to Purchase.**

See **VENDOR AND PURCHASER**.

**Stockbroker.**

— Speculative transactions—Open account—Death of client before settling day—Duty of broker—Liability to account.  
 See **STOCK EXCHANGE**.  
 — Right of broker to indemnity from client.  
 See **STOCK EXCHANGE**.

**PRINCIPAL AND SURETY—Bank guarantee—Duty of bank to guarantor—Non-disclosure by bank to guarantor of suspicions concerning conduct of debtor—Whether guarantor discharged.**

*Per Horridge J.*: The non-disclosure by a bank to the guarantor of a customer's overdrawn account of facts from which the bank is suspicious that the customer is defrauding him does not discharge the guarantor. **NATIONAL PROVINCIAL BANK OF ENGLAND, Lp. v. GLANUSK**

**Horridge J.** [1913] K. B. 335; 82 L. J. (K. B.) 1033; 109 L. T. 103; [1913] W. N. 190; 29 T. L. R. 593

*Co-judgment debtors—Time given to one judgment debtor—Discharge of surety—Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5.*

The rule of law that time given to a principal debtor discharges a surety does not apply, when the time is given after a judgment for the debt has been recovered by the creditor against both the principal debtor and the surety.

*Jenkins v. Robertson* (1854) 2 Drew. 351, followed. *In re A Debtor* (No. 14 of 1913) Div. Ct. [1913] 3 K. B. 11; 82 L. J. (K. B.) 907; 20 Mans. 119; 109 L. T. 323; [1913] W. N. 51; 57 S. J. 579 (sub nom. *In re BUITEN*)

**PRINCIPAL AND SURETY—continued.**

— Insolvent estate—Receiver—Executor surety for testator—Right of indemnity—Right of retainer.  
 See **EXECUTOR**.

*Right of principal to indemnity by surety against liability—Will—Construction—"Debts."*

A surety's equitable right to be indemnified by the principal debtor does not create any debt before the surety has been called on to pay anything under his guarantee:—

*Held*, accordingly, that a release of "all debts" to a principal debtor by the surety's will did not affect the right of the executors to come on the principal debtor's beneficial interest under the will for indemnity against claims made under the guarantee by the creditor after the testator's death. *In re MITCHELL, FREELOVE v. MITCHELL - Parker J.* [1913] 1 Ch. 201; 82 L. J. (Ch.) 121; 108 L. T. 34; 57 S. J. 213

**PRINTER**—Libel—Privileged occasion—Co-defendants—Malice of one defendant—Ordinary course of business—Acts incidental to publication.  
 See **DEFAMATION**.

**PRIORITY**—Company—Voluntary liquidation—Unsuccessful liquidation—Costs.  
 See **COMPANY—WINDING-UP—Liquidator**.

— Mortgages.

See **MORTGAGE**.

**PRIVATE STREET WORKS ACT, 1892.**

See **LOCAL GOVERNMENT**.

**PRIVILEGE**—Libel—Privileged occasion—Trade protection—Mutual society.  
 See **DEFAMATION**.

**PROBATE.**

*Action*, col. 482.

*Administration, Grant of Letters of*, col. 483.

*Revocation*, col. 485.

**Action.**

*Defendant convicted of manslaughter of testator—Striking defendant out of proceedings as having no interest in estate of testator—Public policy.*

Public policy demands that the rule of law that neither a person nor his representative claiming under him can obtain or enforce any rights directly resulting from his own crime should equally apply to manslaughter as it does to murder.

*Cleaver v. Mutual Reserve Fund Life Association* [1892] 1 Q. B. 147, and *In the Goods of Crippen* [1911] P. 108, applied.

Decision of *Evans P.* affirmed. **IN THE GOODS OF HALL, HALL v. KNIGHT AND BAXTER** C. A. [1913] W. N. 283; 30 T. L. R. 1; 58 S. J. 30; 29 T. L. R. 769; 109 L. T. 587

*Costs—Supplemental probate of a codicil—Executors opposing probate—Improper plea of want of knowledge and approval—Codicil*

**PROBATE (Action)—continued.**

*admitted to probate—Executors condemned in costs.*

In a probate action where the plt. and a deft., daughter of the testator, were practically the only persons interested in the residue under his will and two codicils thereto, the plt., being desired to do so by the executors, propounded a third codicil two years after probate of the will and earlier codicils had been obtained, and the executors in their defence pleaded that the codicil was not duly executed and that the testator did not know and approve of the contents thereof. The codicil was admitted to probate, and the executors were condemned in costs. *IN THE GOODS OF SPEKE; SPEKE v. DEAKIN AND OTHERS* - **Bargrave Deane J. 30 T. L. R. 73; 58 S. J. 99**

**Administration, Grant of Letters of.**

*Creditor's application for grant of letters of administration—Inability to serve widow of deceased with citation—Evidence as to notice of application—Grant made—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73.*

On an application for a grant of administration to a creditor it was stated in affidavits that several unsuccessful attempts had been made to serve the citation upon the widow, who had previously refused to apply for a grant. It was submitted that the evidence clearly shewed that she had notice of the application and that service of citation should be dispensed with.

The Court made the grant without requiring the widow to be served. *In re BISHOP (JOHN ALFRED)* **Evans P. 108 L. T. 928; 57 S. J. 611**

*Grant with will annexed—Sole executor undergoing imprisonment for a misdemeanour—No renunciation by executor—Application for grant by a residuary legatee—Executor passed over—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 23.*

It is enacted by s. 73 of the Court of Probate Act, 1857, that "where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who, if this Act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this Act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator upon his giving such security (if any) as the Court shall direct, and every such

**PROBATE (Administration, Grant of Letters of)—continued.**

administration may be limited as the Court shall think fit."

Where the sole executor named in a will was undergoing imprisonment for conspiracy and had refused to renounce his right thereunder, an application for a grant of letters of administration with the will annexed was made by one of the residuary legatees named therein:—

*Held*, that s. 73 gave the Court power to pass over the executor and to make a grant to the applicant. *IN THE ESTATE OF DRAWMER*

**Bargrave Deane J. 108 L. T. 732; 57 S. J. 534**

*Outstanding grant—Letters of administration not forthcoming—Loss or destruction—Additional estate—Retraction of renunciation—Fresh grant to person entitled—Practice as to form of all grants in future.*

The deceased, a married woman, died in 1888 intestate, leaving her husband and one child surviving.

In May, 1889, the husband was adjudicated bankrupt, and in June, 1889, he renounced his right to take out letters of administration in respect of his deceased wife's estate.

In Oct., 1889, a grant of letters of administration was made to his trustee in bankruptcy.

In Mar., 1891, the bankruptcy was annulled, on payment by the bankrupt of 20s. in the pound.

In May, 1891, the trustee in the bankruptcy obtained his release as such trustee.

More than twenty years afterwards, a sum of about 700l. in personality became payable to the legal personal representative of the deceased, and inquiries by the husband, who was beneficially entitled to the sum, and by his solicitor, elicited that the outstanding letters of administration could not be found, and that the same had been handed by the administrator to his successor in the office of official receiver in bankruptcy, and the latter stated that the document must have been destroyed with the file of the bankruptcy proceedings.

On a motion by the husband for leave to retract his renunciation, for revocation of the outstanding grant, and for a fresh grant of letters of administration to himself:—

The Court, in making the order, directed that in future every grant of letters of administration, whether issued to a person in his official capacity, or otherwise, shall contain a personal undertaking by the grantee that the letters of administration shall be brought into and lodged in the Principal Probate Registry, upon formal notification being given to the grantee at any time that this is required to be done. *IN THE ESTATE OF HEATHCOTE* - **Bargrave Deane J. [1913] P. 42;**

**82 L. J. (P.) 40; 108 L. T. 122; [1913] W. N. 48; 29 T. L. R. 268; 57 S. J. 266**

*Probate Act (Ireland), 1857 (20 & 21 Vict. c. 79), s. 78—Uberrima fides, need for, on ex parte application—Accounting party.*

There must be *uberrima fides* on an *ex parte* application.

Where an applicant for administration under s. 78 of the Probate Act (Ireland), 1857, makes a statement, subsequently con-

**PROBATE** (Administration, Grant of Letters of)  
—continued.

traduced by medical testimony, as to the incapacity of another next of kin, his application will, on this ground alone, be refused.

The Court will not grant administration to one who is himself an accounting party. *IN THE GOODS OF TOOLE* - Madden J. [1913] 2 I. R. 188

*Survivorship—Two persons dying together—Husband and wife—Wills—Probate or administration with will annexed—Form of oath to lead grants.*

Where there is no evidence or where it is clear that there is not sufficient evidence, of survivorship, in cases of husband and wife dying at the same time, the practice in future will be to apply in the Principal Probate Registry, and not, as heretofore, by motion to the Court, for grant of probate or administration and for leave to vary the usual form of oath.

Where, however, there is any doubt as to survivorship, the registrar will refer the case to the Court, to be dealt with on motion. *IN THE ESTATE OF ROBEY* - Bargeave Deane J. [1913] P. 6; 82 L. J. (P.) 21; 107 L. T. 655; 29 T. L. R. 95

**Revocation.**

*Supposed intestacy—Grant of letters of administration—Sale of real estate by administratrix—Subsequent discovery of will appointing executors—Invalidity of purchaser's title—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 75, 77, 78—Land Transfer Act, 1897 (60 & 61 Vict. c. 65), ss. 1, 2, 24.*

A grant of administration bona fide obtained in ignorance of a will appointing executors is void ab initio, and any sale of real estate by the supposed administratrix is also void, though, if the sale is made for payment of debts or duties which the executors would have been compellable to pay, the purchaser may possibly have a right or lien by subrogation to the amount (if any) of his purchase-money actually so applied.

*Graysbrook v. Fox* (1565) 1 Plowd. 275; *Abram v. Cunningham* (1677) 2 Lev. 182; *Boxall v. Boxall* (1884) 27 Ch. D. 220; and *Ellis v. Ellis* [1905] 1 Ch. 613, applied.

*Debendra Nath Dutt v. Administrator-General of Bengal* (1908) L. R. 35 Ind. Ap. 109, and *Craster v. Thomas* [1909] 2 Ch. 348, distinguished.

*Dicta in Doyle v. Blake* (1804) 2 Sch. & Lef. 231, 237, and *Errington v. Rorke* (1857) 6 R. C. L. Rep. 279, 316, disapproved. *HEWSON v. SHELLEY* - Astbury J. [1913]

2 Ch. 384; 82 L. J. (Ch.) 551; 109 L. T. 157; [1913] W. N. 246; 29 T. L. R. 699; 57 S. J. 717

**PROBATE DUTY.**

*See ADMINISTRATION.*

**PROCURATION**—Cheque—Signature per pro.

*See BANKER—Cheque.*

— Criminal law.

*See CRIMINAL LAW—Vagrancy.*

**PROCURATIONS**—Claim for procurations by archdeacon holding visitation outside limits of defendant's parish.  
*See ECCLESIASTICAL LAW.*

**PROFIT**—Sale of goods—Non-acceptance—Company—Winding-up—Proof—Double profit.  
*See SALE OF GOODS.*

**PROFITS.**

*See REVENUE—Income Tax.*

**PROHIBITION**—Judicial act.

*See IRISH LAW—Labourers Acts, and JUSTICES—Disqualification.*

**PROOF**—Bankruptcy.

*See BANKRUPTCY.*

— Company—Liquidation—Proof.

*See COMPANY—WINDING UP—Proof, and SALE OF GOODS.*

— Insurance company—Winding-up—Current policies—Employers' liability policies—Contingent liabilities.

*See COMPANY—WINDING-UP.*

— Onus of.

*See EVIDENCE and WORKMEN'S COMPENSATION.*

**PROSPECTUS**—Company—Contract to take shares—Rescission—Fraudulent misrepresentation—Quotation in prospectus of report by one of the directors.  
*See COMPANY—Prospectus.*

**PROSTITUTION.**

*See CRIMINAL LAW—Vagrancy.*

**PROVOCATION**—Murder—Manslaughter.

*See CRIMINAL LAW.*

**PROXIES**—Company—Meeting—Poll—Adjournment ad hoc—No adjournment of meeting—Validity of proxies lodged forty-eight hours before poll.  
*See COMPANY—Meeting.*

**PUBLIC AUTHORITIES PROTECTION**—Claims to land.

*See LIMITATIONS, STATUTES OF.*

**PUBLIC HEALTH**—Tuberculosis—Local Government Board Order—The Public Health (Tuberculosis) Regulations, 1912, dated Dec. 19, 1912. 11 L. G. R. Order, p. 17.

*See LOCAL GOVERNMENT, HIGHWAY, LONDON—Nuisance.*

— Buildings.

*See HIGHWAY.*

— Improvement commissioners—Special Act—Corporation—Contract not under seal—Executed consideration—Contract to pay implied from acceptance of benefit.  
*See LOCAL GOVERNMENT—Urban District Council.*

— Offensive trade—Order of local authority declaring trade offensive—Business established before order.  
*See LOCAL GOVERNMENT.*



**PUBLIC HEALTH**—*continued.*

*Rag flock—Standard of cleanliness—Making an article of bedding—Re-stuffing or remaking a mattress—Rag Flock Act, 1911 (1 & 2 Geo. 5, c. 52), s. 1, sub-s. 1.*

By s. 1, sub-s. 1, of the Rag Flock Act, 1911, it shall not be lawful for any person to use for the purpose of making any article of upholstery, cushions, or bedding flock manufactured from rags or to have in his possession flock manufactured from rags intended to be used for any such purpose, unless the flock conforms to the prescribed standard of cleanliness. If any person uses or has in his possession flock in contravention of the Act, he is liable on summary conviction to a fine :—

*Held*, that the words "making any article of bedding" do not include the process of taking flock out of the covering of a mattress and refilling the covering with the same and no other flock. *GAMBLE v. JORDAN* - Div. Ct. [1913] 3

K. B. 149; 82 L. J. (K. B.) 743; 11 L. G. R. 989; 23 Cox. C. C. 451; 108 L. T. 1022; [1913] W. N. 164; 77 J. P. 269; 29 T. L. R. 539

— Rates.

*See RATES.*

— Sewers.

*See LOCAL GOVERNMENT—Drainage.*

— Streets.

*See LOCAL GOVERNMENT—Streets.*

**PUBLIC-HOUSE**—Water—Supply—London—"Domestic purposes"—Trade purposes—Catering business.  
*See WATER.*

**PUBLICATION**—Discovery—Interrogatories—Defamation—Publication to unknown persons.  
*See DISCOVERY.*

— Divorce—Nullity—Hearing in camera—Publication of proceedings after decree—Contempt of Court.  
*See DIVORCE.*

— Injunction—Documents—Privilege—Restraint of publication—Documents improperly obtained—Secondary evidence—Copies.  
*See INJUNCTION.*

**PURCHASE**—Reversion duty—"Purchase" of reversion—Marriage settlement.  
*See REVENUE—Reversion Duty.*

**PURCHASER**—Vendor and.  
*See VENDOR AND PURCHASER.*

**QUANTUM MERUIT**—Ship—Salvage—Towage—Abandoned vessel—Derelict—Conditions substituting salvage for towage.  
*See SHIPPING—Salvage.*

**QUARTER SESSIONS.**  
*See JUSTICES.*

**QUEBEC**—Laws of.  
*See CANADA—Quebec.*

**QUIT**—Notice to—Agricultural holdings—Market garden—"Good and sufficient cause"—Demand of increased rent.  
*See LANDLORD AND TENANT.*

**QUO WARRANTO**—Old age pensions—Committee.

*See LOCAL GOVERNMENT—County Council.*

**RAILWAY.**

*Canada. See CANADA—British Columbia and Quebec.*

*Carriage of Goods, col. 488.*

*Lands—Clauses Acts. See LANDS CLAUSES ACTS.*

*London. See LONDON.*

*Mines, col. 491.*

*Negligence. See CANADA—Quebec.*

*Railway and Canal Commission. See APPEAL—Railway and Canal Commission.*

*Rates, col. 492.*

*Receiver and Manager, col. 492.*

*Running Powers, col. 493.*

*Undue Preference, col. 494.*

**Canada.**

*See CANADA—British Columbia, and Quebec.*

**Carriage of Goods.**

*Condition in consignment note—Goods received and held by railway company "subject to general lien for any . . . moneys due to them from the owners of such goods upon any account"—Construction of condition.*

The plts., who were the vendors of goods, authorized their agents to deliver the goods to the defts., the Great Western Ry. Co., for carriage to the buyers upon the terms of a consignment note which contained the following condition :—"All goods delivered to the company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods and also to a general lien for any other moneys due to them from the owners of such goods upon any account; and in case any such lien is not satisfied within a reasonable time from the date upon which the company first gave notice to the owners of the goods of the exercise of the same, the goods may be sold by the company by auction or otherwise and the proceeds of sale applied to the satisfaction of every such lien and expenses."

The plts.' agents accordingly delivered the goods to the defts. The plts. had paid all freight and charges in respect of the carriage of the goods. While the goods were still in possession of the defts. as carriers, the plts. heard of the insolvency of the buyers and, by their agents, gave notice of stoppage in transitu to the defts. The buyers were indebted to the defts. in the sum of 1170*l.*, which did not include any freight or other charges in respect of the goods. The

**RAILWAY (Carriage of Goods)—continued.**

defts. claimed that under the condition in the consignment note they had a lien against the plts. in respect of the 1170*l.* due from the buyers:—

*Held*, that, although its words were wide enough to extend considerably further, the condition ought to be read as meaning that the carrier should not be bound to deliver the goods to the consignee, until the consignee had discharged any debt due in respect of all goods which had been carried for him by the carrier. It was not necessary that it should be read as meaning that the carrier should be entitled to a lien as against persons who had nothing to do with the debt. The defts. were therefore not entitled to hold the goods as against the plts. **UNITED STATES STEEL PRODUCTS CO. v. GREAT WESTERN RY. CO.** - **Pickford J. [1913]**

**3 K. B. 357; 82 L. J. (K. B.) 968; 109 L. T. 212; [1913] W. N. 223; 29 T. L. R. 643; 58 S. J. 31**

*"Owner's risk" — Special contract — "Non-delivery" of consignment — Non-delivery of part of consignment.*

Appeal from Bristol County Court.

The plt. sued the defts. for damages for the non-delivery of several carcasses of frozen meat, part of a consignment of carcasses delivered by him to them for carriage to a station on their ry. When the consignment was delivered on the next day at that station it was found that the number of carcasses delivered to the plt. was less than the number which had been delivered to the defts., and the plt. gave the defts. written notice of a claim more than three days after the arrival, but within fourteen days after the despatch of the consignment.

The plt. had despatched the goods at "owner's risk" and had signed a consignment note which provided that the defts. should be relieved from "all liability for loss, damage, misdelivery, delay, or detention, except upon proof that such loss, damage, misdelivery, delay, or detention arose from wilful misconduct on the part of the company's servants. But nothing in this agreement shall exempt the company from any liability they might otherwise incur in the following cases of non-delivery, pilferage, or misdelivery:—(1.) Non-delivery of any package or consignment . . . . Provided that the company shall not be liable in the said cases of non-delivery, pilferage, or misdelivery, on proof that the same has not been caused by negligence or misconduct on the part of the company or their servants." One of the general conditions provided that: "No claim in respect of goods for loss or damage during the transit, for which the company may be liable, will be allowed, unless the same be made in writing within three days after delivery of the goods in respect of which the claim is made, such delivery considered to be complete at the termination of the transit . . . or in case of non-delivery of any package or consignment within fourteen days after despatch."

The defts. claimed exemption from liability, under the terms of the contract, upon the ground that this was not a case of "non-delivery" within the meaning of the contract.

**RAILWAY (Carriage of Goods)—continued.**

The county court judge gave judgment for the plt., and the defts. appealed.

*Held*, that non-delivery of part of a consignment was "non-delivery" of the consignment within the meaning of the contract, and that the defts. were not exempted from liability. Appeal dismissed. **WILLS v. GREAT WESTERN RY. CO.** - **Div. Ct. [1913] W. N. 332; 30 T. L. R. 89; 58 S. J. 140**

*Reasonable time for delivery — Strike of railway company's servants — Perishable goods — Sale by agent of necessity.*

Perishable goods were consigned by the defts.' ry. for delivery to the plts., no time being specified within which the goods were to be delivered. During the transit a general strike of ry. servants, including the defts.' servants, broke out, and the defts. were unable to forward the goods to their destination. There was no evidence that the strike was caused or contributed to by the defts. The goods becoming deteriorated, the defts. sold them. In an action to recover damages for breach of contract to deliver the goods:—

*Held*, that in calculating what was a reasonable time for delivery in accordance with the principle laid down in *Hick v. Raymond & Reid* [1893] A. C. 22, the strike of the defts.' servants must be taken into consideration as one of the circumstances existing at the time of the carriage, and that therefore the defts. were not liable for the delay.

*Semble*, per Scrutton J.: The doctrine as to sale by an agent of necessity applies to a carrier by land as well as by sea, provided that the necessary conditions exist, namely, that there is a real necessity for the sale, and that it is practically impossible to get the owner's instructions in time as to what shall be done. **SIMS & CO. v. MIDLAND RY. CO.** - **Div. Ct. [1913] 1 K. B. 103; 82 L. J. (K. B.) 67; 18 Com. Cas. 44; 107 L. T. 700; [1912] W. N. 279; 29 T. L. R. 81**

*Steam vessels — Carriage partly by sea and partly by land — Contract for through carriage — Exception of negligence — Reasonableness — Alternative rate at railway company's risk during land portion of carriage — Damage to goods during land carriage — Great Eastern Railway (Steamboats) Act, 1863 (26 & 27 Vict. c. cccv.), s. 5 — Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.*

The defts. owned steamers trading between Antwerp and Harwich, and they also owned a line of ry. from Harwich to North Woolwich. Their special Act, which empowered them to maintain and work the steamers, applied the provisions of the Railway and Canal Traffic Act, 1854, to the steamers and the traffic carried thereon. The plts. were in the habit of having goods consigned to them from Antwerp to North Woolwich via Harwich by the defts.' steamers and ry., and they had signed an agreement requesting that all goods for which there were alternative rates delivered by them or on their account at any of the defts.' stations for carriage by ry. might be carried at the reduced rates, and in consideration thereof the plts. agreed to relieve the defts. from all liability for loss, damage, mis-

**RAILWAY (Carriage of Goods)—continued.**

delivery, delay, or detention, except upon proof that such loss, &c., arose from wilful misconduct on the part of the defts.' servants. Goods of the plts. were shipped on the defts.' steamer at Antwerp for delivery at North Woolwich Station via Harwich at the reduced rate under a bill of lading which had "owner's risk" upon it, and which exempted the defts. from liability for (inter alia) all accidents, loss, and damage whatsoever from any act, neglect, or default of the pilot, master, officers, engineers, or crew in the management or navigation of the ship or otherwise. The goods were damaged during the land journey between Harwich and North Woolwich owing to the negligence of the defts.' servants. There was a higher rate for goods of the same class from Antwerp to North Woolwich under which the goods would have been carried, so far as the land portion of the journey was concerned, at the defts.' risk as common carriers, but the plts. would have had to accept a bill of lading for the sea portion of the journey containing the same negligence clause as that in the bill of lading under which the goods were actually carried:—

*Held*, that as it was one journey from Antwerp to North Woolwich, and as during the sea portion of that journey there was no alternative rate under which the plts. could have had the goods carried at the defts.' risk as common carriers, the condition relieving the defts. from liability for negligence was not just and reasonable within s. 7 of the Railway and Canal Traffic Act, 1854, and that therefore the defts. were liable for the damage to the goods. **WESTERN ELECTRIC CO., LD. v. GREAT EASTERN RY. CO.** Div. Ct. [1913] 3 K. B. 15; 82 L. J. (K. B.) 746; 18 Com. Cas. 250; 109 L. T. 46; [1913] W. N. 171; 29 T. L. R. 566

**Lands Clauses Acts.**

↑ See LANDS CLAUSES ACTS.

**London.**

— General line of building, Erection in front of — Exemption—Powers conferred on a railway company by a special Act. See LONDON.

**Mines.**

*Support—Mines lying outside the forty yards limit—Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 77—85.

As between vendor and vendee the mining sections (77 to 85) of the Railways Clauses Consolidation Act, 1845, so far as support is concerned, do not apply to mines outside the forty yards or other the prescribed limit mentioned in s. 78; consequently, as between a vendor of land to a ry. co. and the ry. co. upon a purchase subject to those sections, the ry. co. enjoys a natural right of support for its ry. from minerals belonging to the vendor lying under other lands outside the statutory limit.

*Great Western Ry. Co. v. Bennett* (1867) L. R. 2 H. L. 27, discussed.

Decision of C. A. [1911] 2 Ch. 97, affirmed.

**RAILWAY (Mines)—continued.**

**HOWLEY PARK COAL AND CANNEL CO. v. LONDON AND NORTH WESTERN RY. CO.**

H. L. (E.) [1913] A. C. 11; 82 L. J. (Ch.) 76; 107 L. T. 625; [1912] W. N. 248; 29 T. L. R. 35; 57 S. J. 42

**Negligence.**

See CANADA—Quebec.

**Railway and Canal Commission.**

— Appeal. See APPEAL—Railway and Canal Commission.

**Rates.**

See RATES—Railway, and Rateable Value, and below, Undue Preference.

*Classification—Liquid metal polish—Jurisdiction of Board of Trade to classify—"Dangerous goods"—Railway Rates and Charges No. 15 (North Eastern Railway, &c.) Order Confirmation Act, 1892 (55 & 56 Vict. c. liii.), Schedule, s. 19, and Part IV., "Exceptional Class"—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 105.*

Liquid metal polish having a flash point of over 73 deg. F. (Abel Close test) in securely closed tins in cases, is "dangerous goods" within the meaning of Part IV. of the Schedule to the Railway Rates and Charges Orders, and the Board of Trade have no jurisdiction under s. 24, sub-s. 11, of the Railway and Canal Traffic Act, 1883, to classify the same, as such goods are already classified in the "Exceptional Class" in Part IV. as "dangerous goods."

The statutory Schedule and classification in the Rates and Charges Orders Confirmation Acts do not in any way fetter or limit the power given to a ry. co. by s. 105 of the Railways Clauses Consolidation Act, 1845, to decide what goods are "in the judgment of the company" dangerous goods; and if a ry. co. in the bona fide exercise of their discretion come to the conclusion that goods, which are not included in any part of the classification, are in their judgment dangerous goods, then such goods are "dangerous goods" within the meaning of the "Exceptional Class" in Part IV. of the statutory Schedule to the Rates and Charges Orders. **NORTH EASTERN RY. CO. v. RECKITT & SONS, LD.**

109 L. T. 327; 29 T. L. R. 573

**Receiver and Manager.**

*Judgment debt—Assignment—Petition by assignee of judgment debt—"Person who has recovered a judgment"—Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4—R. S. C., 1883, Order XLV. r. 1.*

This was a petition presented by F. G. Aman, under s. 4 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), for an appointment of two joint receivers and managers of the undertaking of the respondent ry. co.

On Dec. 9, 1912, judgment had been obtained by certain persons in the K. B. D. against the ry. co. for 15,266l. 15s. 6d. in respect of arrears of interest on a sum of 5 per cent. perpetual debenture stock of the co.

**RAILWAY (Receiver and Manager)—continued.**

On May 22, 1913, this judgment debt was assigned by the holders thereof to F. G. Aman, he being the purchaser of the 5 per cent. debenture stock of the co. The only point on the petition was whether the petitioner, as such assignee of the judgment debt, was a "person who has recovered a judgment" within the meaning of s. 4 of the Railway Companies Act, 1867, and could present the petition alone, or whether the assignors of the debt should also be joined as petitioners.

Eve J. said that he did not think he ought to put the petitioner to the expense of joining the assignors of the judgment debt as joint petitioners with him. The case of *Goodman v. Robinson* (1886) 18 Q. B. D. 332, was sufficient authority for making the order asked. It was true that the case had been criticized by Fletcher Moulton L.J. in the later case of *Forster v. Baker* [1910] 2 K. B. 636, but *Goodman v. Robinson* had not been overruled, and in his Lordship's view it was eminently in accordance with good sense. He therefore made the order asked for by the petition. *In re FRESHWATER, YARMOUTH, AND NEWPORT RY. CO., LD.*

Eve J. [1913] W. N. 184; 29 T. L. R. 568; 57 S. J. 593

**Running Powers.**

*Amalgamation — Rights of amalgamating company — Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 38.*

Appeal from a decision of the C. A., [1912] 1 Ch. 206, reversing a decision of Neville J. [1911] 2 Ch. 173.

Under a special Act of 1865 the Manchester, Sheffield and Lincolnshire Ry. Co., which has since become the Great Central Ry. Co., acquired running powers over the Midland Ry.'s Mansfield and Workop branch line between Mansfield on the south and Shireoaks on the north, where the two lines were connected by a junction. Under a special Act of 1897 the Lancashire, Derbyshire and East Coast Ry. Co. constructed a short line and effected a junction with the Midland Ry. at Shirebrook, and by an agreement of 1898, made under the authority of this Act, acquired running powers over a small portion of the Midland Ry. between Shirebrook Junction and Shirebrook Colliery. By a special Act of 1906, which incorporated Part V. of the Railways Clauses Act, 1863, the undertaking of the Derbyshire Co. was transferred to the Great Central Co. and the Derbyshire Co. was dissolved, and the Act confirmed an agreement of 1906, which continued the agreement of 1898. The Great Central Ry. Co. brought an action against the Midland Ry. Co. claiming by virtue of their general running powers to use Shirebrook Junction as a means of access to and from the Mansfield line for all descriptions of traffic and not merely for traffic to and from the Shirebrook Colliery.

Neville J. held that the plts. were entitled to use the two lines in conjunction as one continuous line, but subject as to the Shirebrook Colliery traffic to the agreement of 1906.

The C. A. reversed this decision.

The H. L. dismissed the appeal, holding that by s. 38 of the Railways Clauses Act, 1867, the undertaking, powers, and rights of the Derby-

**RAILWAY (Running Powers)—continued.**

shire Co. became vested in the Great Central Co., to be used by them in the same manner and to the same extent as the same were used by the Derbyshire Co. at the time of the amalgamation, and, consequently, that the Great Central Co. had no greater powers as regards the user of Shirebrook Junction than the Derbyshire Co. had.

*Midland Ry. Co. v. Great Western Ry. Co.*, L. R. 8 Ch. 841, distinguished. *GREAT CENTRAL RY. CO. v. MIDLAND RY. CO.* — H. L. (E.)

[1913] W. N. 294; 30 T. L. R. 33; 58 S. J. 65

**Undue Preference.**

*Carriage of goods partly by land and partly by sea — Competition with carriers by sea — Through rates — Rebate not in rate book — Undue preference — Statement of sea proportion of through rate — Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 14 — Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 33, sub-s. 5.*

The defts., a ry. co., were owners of steam vessels in which they carried goods—cattle, stout, and wool—from Dublin to Holyhead, and thence conveyed the goods by their ry. to various inland towns in England, the rates from Dublin to these towns being through rates fixed by agreement by the Dublin Conference. The applicants were carriers by sea from Dublin to Manchester by the Manchester Ship Canal, and conveyed goods from Dublin to Manchester by sea and thence by the defts.' ry. to the same inland towns in England. They carried at lower rates than the defts.' existing through rates, and thus secured some of the defts.' customers.

The defts., becoming aware of this, reduced their rates to the same amount as the applicants' rates by granting to their customers rebates which were not entered in the rate books. The result of this was that the charge per mile was higher for the applicants' traffic from Manchester to the inland towns than for the defts.' traffic from Holyhead to the same towns. The defts. had entered in their rate book kept at Dublin this note: "The sea proportion of rates in this book between Dublin and English stations is represented by a mileage share as for seventy miles of the throughout distance," but there was no corresponding entry in the book kept at the port of Holyhead.

The applicants having made three complaints against the defts. :—

*Held*, (1.) that as the defts.' rates shewn in the rate book were not, by reason of the rebates, the effective rates actually charged, the "rate for the time being charged" was not shewn by the rate book, and the omission to shew such effective rates was a breach of s. 14 of the Regulation of Railways Act, 1873; (2.) that the fact that the defts. had reduced their through rates to the level of the applicants' rates, and that in consequence the land portion of the defts.' through rate from Holyhead to the inland towns was less per ton per mile than the local rate per ton per mile charged for the applicants' traffic from Manchester to the same towns was not an undue preference by the defts. of themselves, but was legitimate competition; and (3.) that the provision in s. 33, sub-s. 5, of the Railway and Canal Traffic Act,

**RAILWAY (Undue Preference)—continued.**

• 1888, which requires a ry. co. that carries partly by land and partly by sea to have in their books at a port used by vessels which carry the sea traffic the proportion of the through rate which is appropriated to the conveyance by sea, was sufficiently complied with by the statement in the rate book kept at Dublin as to the sea proportion of the traffic, and that it was not necessary that the book kept at the port of Holyhead should also contain this information. In such cases it is sufficient, if the requisite information be contained in the rate book kept at the outward port. **DUBLIN AND MANCHESTER STEAMSHIP CO. v. LONDON AND NORTH WESTERN RY. CO.** - - - **Ry. & Can. Com. 108 L. T. 122; 28 T. L. R. 411**

*Equal charges — Newspapers carried by passenger trains—Application of s. 90 of the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20)—Company bound by profession.*

In an action brought under s. 90 of the Railways Clauses Act, 1845, complaining of inequality of charge in respect of newspapers carried by defts. by passenger trains from Dublin as compared with newspapers carried from Belfast, the rate was a flat rate, irrespective of distance, for carriage over the entire of the defts. ry., and the train times and average length that the respective papers were carried were different.

• *Held*, that (1.) though there was no statutory charge prescribed, and though the defts. were not bound to carry papers by passenger trains, still, as they professed to do so, s. 90 applied to preferential treatment in respect of such papers. *Stove's Case* [1904] 1 K. B. 689, discussed and distinguished.

(2.) Any cause of action under s. 90 was confined to the portion of the line between Dublin and Belfast.

(3.) The circumstances of the traffic from Dublin and from Belfast were not the same, and the action therefore failed.

*Semble*, a flat rate irrespective of distance is not within the section.

*Quære*, whether the mere circumstance that the points of departure were different, necessarily and as a matter of law, would take the case out of the section. *The Denaby Case* (1885) 11 App. Cas. 97, considered. **INDEPENDENT NEWSPAPERS, LD. v. GREAT NORTHERN RY. CO. (IRELAND)** - - **Gibson J. [1913] 2 I. R. 255**

*Measure of damages in case of undue preference.*

Where applicants have proved a case of undue preference, the damages they are entitled to recover from the ry. co. are such damages as they have actually sustained. *Prima facie* these are the excess charges which the applicants have actually paid, but the ry. co. may shew that these do not represent the actual damage arising directly from the wrong done. **CHANCE & HUNT, LD. v. GREAT WESTERN RY.** - **Ry. & Can. Com. 29 T. L. R. 483**

— **Railway and Canal Commission—Reference—Arbitration—Telephone—Appeal.**  
*See* **APPEAL.**

**RAILWAY AND CANAL TRAFFIC ACT, 1888.**  
*See* **APPEAL.**

**RAILWAYS CLAUSES CONSOLIDATION ACT, 1845, s. 145.**

*See* **LIMITATIONS, STATUTES, OF—Special Periods of Limitation.**

**RATES.**

*Financial statement. Receipts and payments of overseers in respect of general district and other rates.* **L. G. B. Order, 23rd Oct. 1913**

**11 L. G. R. Order, &c., 141**

*Appeal, col. 496.*

*Deductions. See below, Owner, Rating of.*

*Exemption, col. 497.*

*Occupation, col. 498.*

*Owner, Rating of, col. 499.*

*Railway, col. 500.*

*Rateable Value, col. 501.*

*Tramway. See Rateable Value.*

*Valuation. See above, Rateable Value.*

*Valuation (Metropolis) Act, 1869. See above, Rateable Value.*

*Water Rate. See WATER.*

**Appeal.**

*County rate—Appeal by overseers—Reduction of total rateable value in parish on objection to valuation list—Cause of complaint—Repayment to ratepayers of sums overpaid in respect of county rate—County Rates Act, 1852 (15 & 16 Vict. c. 81), ss. 22, 23.*

In March, 1910, a county rate was made for the ensuing twelve months. After instalments had been paid by the overseers of the parish of B., the assessment committee of the union containing B., and the overseers of B., received notices of objection from a ry. co. which was a ratepayer in that parish.

The overseers gave notice of an appeal against the current county rate to the then next quarter sessions.

Before the objections were finally decided by the assessment committee, the overseers paid to the guardians another instalment of the county rate. The assessment committee reduced the assessment of the ry. co. by about 5000*l.*, and owing to that and other alterations the total rateable value of the parish was reduced by about 3500*l.*

The overseers refunded to the ry. co. the sums of 121*l.* and 107*l.*, being the amount overpaid by it in respect of the county rate before the date of the notice of appeal against such rate, and after the same respectively.

On the hearing of the appeal the overseers claimed to have both sums repaid to them by the county council.

The Court of quarter sessions made an order that both sums should be so repaid:—

*Held*, that by virtue of s. 23 of the County Rates Act, 1852, there was no power to make the order for the repayment of the 121*l.*; and that the quarter sessions were wrong in ordering repayment of the sum of 107*l.*, because the overseers' cause of complaint arose either when the county rate was made, or when the total

**RATES (Appeal)—continued.**

rateable value of the parish was reduced, and that therefore they had not appealed to the next practicable Court of quarter sessions after their cause of complaint had arisen. *GLA-*

*MORGAN C. C. v. BARRY OVERSEERS* - Div. Ct.  
108 L. T. 118

*Poor rate—Appeal to quarter sessions—Valuation list—Notice of objection to, after approval by assessment committee—Unfairness in valuation of hereditament in respect of which person other than objector is rated—Right of objector to give notice of objection to other person at any time—Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 18—Union Assessment Committee Amendment Act, 1864 (27 & 28 Vict. c. 39), s. 1.*

Although a ratepayer who desires to object to a valuation list, before it is approved by the assessment committee, must under s. 18 of the Union Assessment Committee Act, 1862, give the notices of objection prescribed by the section before the expiration of twenty-eight days after notice by the overseers of the deposit of the list, he can, if after the approval of the valuation list he desires to appeal to quarter sessions against a rate made in conformity with the list upon the ground of unfairness or incorrectness in the valuation of a hereditament in respect of which another person is liable to be rated, give under s. 1 of the Union Assessment Committee Amendment Act, 1864, notices of objection against the valuation list to the assessment committee, the overseers, and the other person at any time after the approval of the list:—

*Quare* whether it is necessary as a condition precedent to an appeal by a ratepayer to quarter sessions against a rate made in conformity with a valuation list approved by the committee that he should give notice of objection against the valuation list to any persons other than the assessment committee. *REX v. RECORDER OF BRISTOL. Ex parte BRISTOL WATERWORKS CO.*

Div. Ct. [1913] 3 K. B. 104; 82 L. J. (K. B.) 851; 11 L. G. R. 1023; 109 L. T. 237; [1913] W. N. 152; 77 J. P. 360

**Deductions.**

See below, **Owner, Rating of.**

**Exemption.**

See **LONDON—Rates.**

*Public worship—Building erected and used for—Police rate—Belfast Improvement Act, 1845 (8 & 9 Vict. c. cxxiii.), ss. 348, 351—County Antrim and Belfast Borough Act, 1865 (28 & 29 Vict. c. clxxviii.), ss. 51, 53.*

In order that property should be exempted from the police rate leviable under the Belfast Improvement Act, 1845, as being a "building erected and used for public worship," it is not necessary that the erection and user should be exclusively for such purpose; it is sufficient that this should be the main and principal purpose.

The exemption does not apply to the general

**RATES (Exemption)—continued.**

purposes rate leviable under the County Antrim and Belfast Borough Act, 1865.

By the Belfast Improvement Act, 1845, the Corporation of Belfast are empowered to make a rate, known as the police rate, upon all hereditaments within the limits of the Act; and by the County Antrim and Belfast Borough Act, 1865, they are empowered to make a general purposes rate on the occupiers of all rateable property within the borough. Sect. 351 of the Act of 1845 provides that no person is to be rated in respect of any church, chapel, meeting-house, or other building erected and used for public worship. Sect. 53 of the Act of 1865 enacts that the provisions of the Act of 1845, relating to the making, collecting, or recovering of rates, and to appeal against the same, shall extend to the general purposes rate.

The corporation having assessed the police rate and general purposes rate upon premises in the city of Belfast known as the Grosvenor Hall, the owners and occupiers of the hall appealed to the Recorder of Belfast. It appeared that the hall was built with the primary object of providing a large audience-chamber for religious services, and that such services continued the main object; and the recorder found that the premises constituted in all essential respects a Methodist church, unless some of the facts hereafter mentioned deprived them of that character. They were licensed for the celebration of marriages; and marriages were celebrated therein, and baptism and communion administered. There was a regular church membership of 700 to 800 persons, and two stated clergymen. Public religious services were held twice or three times every Sunday. In addition to religious services, concerts and cinematograph exhibitions were held on the premises about twenty-five nights in each year, and literary and scientific lectures about thirty nights, a small charge for admission being made to defray expenses. The premises were licensed under s. 51 of the Public Health Amendment Act, 1890. The recorder held that the premises were exempt from both police rate and general purposes rate:—

*Held*, that there was evidence on which the recorder could find, and that he rightly found, that the premises were erected and used for public worship, and were therefore exempt from the police rate.

But *held*, following and applying *Cunningham v. Belfast Corporation* and *M'Causland v. Belfast Corporation* [1913] 2 I. R. 450, that the exemption in s. 351 of the Act of 1845 did not apply to the general purposes rate imposed by the Act of 1865, and that the premises were liable to this rate. *REX (BELFAST CORPORATION) v. RECORDER OF BELFAST*

Div. Ct. (Ir.) [1913] 2 I. R. 439

**Occupation.**

*Owner in possession of land used as a gathering ground for waterworks.*

A municipal corporation owned certain reservoirs and waterworks and received into their reservoirs the water which flowed from an adjoining gathering ground. In order to

**RATES (Occupation)—continued.**

prevent pollution of the water flowing from it to their works the corporation purchased the gathering ground, which consisted of agricultural land and moorland. They thereupon demolished certain farmhouses on the land, abolished certain rights of pasturage and turf cutting thereon, and limited the user of the land to purposes of sporting and afforestation. They planted a portion of the land with trees, converted another portion into nurseries, and let the sporting rights over the land to a lessee for a term of years, but they did not exercise any other rights of occupation over the land:—

*Held*, that the corporation were in rateable occupation of the whole of the land as a gathering ground.

Dictum of Lord Mansfield in *Rew v. St. Luke's Hospital* (1760) 2 Burr. 1053, at p. 1064, considered.

Order of the C. A. [1912] 1 K. B. 270, affirmed. *LIVERPOOL CORPORATION v. CHORLEY UNION ASSESSMENT COMMITTEE AND WITHELL OVERSEERS* - H. L. (E.) [1913] A. C. 197;

82 L. J. (K. B.) 555; 11 L. G. R. 182; 108 L. T. 82; 77 J. P. 185; [1913] W. N. 24; 29 T. L. R. 246; 57 S. J. 263

**Owner, Rating of.**

*Improvement rate in the nature of a general district rate—Owners of properties, under the net annual value of 10l., rated—Abatement or compensation claimed by owners—Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 181—Ross Improvement Act, 1865 (28 Vict. c. cviii.), ss. 22, 65—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207, 211, 227, 340, 341.*

Prior to the passing of the Public Health Act, 1875, the R. Improvement Comms. had under s. 65 of their special Act of 1865, which Act incorporated s. 181 of the Towns Improvement Clauses Act, 1847, as to the rating of owners instead of the occupiers of property of 10l. per annum and under, levied a rate called "The R. Improvement Rate."

After 1875 the R. Improvement Comms. became the urban district council and continued to levy the rate as a local improvement rate in the nature of a general district rate under their special Act of 1865, and the Public Health Act, 1875, ss. 207 and 227.

Sect. 211 of the Public Health Act, 1875, allows properties of a rateable value not exceeding 10l., where the owner is rated instead of the occupier, to be assessed on a reduced estimate. In 1912 certain owners of properties in R. of 10l. per annum and under refused to pay the rate in full and demanded the reductions or compensation allowances given to owners of such properties by s. 211 of the Public Health Act, 1875:—

*Held*, that the rate was an improvement rate in the nature of a general district rate governed by the R. Improvement Act, 1865, and the incorporated Towns Improvement Act, 1847, s. 181. That the 10l. property owners were liable to pay it in full, and were not entitled to reductions or allowances under

**RATES (Owner, Rating of)—continued.**

s. 211 of the Public Health Act, 1875. *ROSS U. D. C. v. DANIELS AND OTHERS*  
Div. Ct., 11 L. G. R. 1225; 77 J. P. 456

*Poor rate—Parliamentary borough—House wholly let out in apartments or lodgings—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7—Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), ss. 3, 4.*

The council of a metropolitan borough, which was not a parliamentary borough when the Representation of the People Act, 1867, was passed, and which did not become a parliamentary borough until the year 1885, rated the owners of two-dwelling-houses which were wholly let out in apartments or lodgings not separately rated, allowing to the owners the commission or abatements provided for by the Poor Rate Assessment and Collection Act, 1869. The auditor surcharged the abatements on the rate collector, but upon application for a certiorari to bring up and quash the surcharges it was held by a Div. Ct. that the borough Council was entitled to make the abatements.

The auditor appealed:—

*Held*, that the words "all boroughs" in s. 7 of the Act of 1867 applied to all parishes which had from time to time, since the passing of the Act, become parliamentary boroughs, and were not limited to boroughs in existence in or prior to the year 1867, and they therefore included the parliamentary borough in question. The owners having properly been rated under that section, the provisions of the Poor Rate Assessment and Collection Act, 1869, did not apply, and the auditor was right in deciding that the abatements were wrongly allowed.

*West Ham Churchwardens v. Fourth City Mutual Building Society* [1892] 1 Q. B. 654; 61 L. J. M. C. 128, distinguished; *White and Hales v. Islington Borough Council* [1909] 1 K. B. 133, considered and explained.

Decision of Div. Ct., 11 L. G. R. 235, reversed. *REX v. CARSON ROBERTS. Ex parte BATTERSEA B. C.* - C. A. 11 L. G. R. 913; 109

L. T. 466; [1913] W. N. 207; 77 J. P. 403; 57 S. J. 644

**Railway.**

*General district rate—Assessment—Tramway—“Land used only, as a railway”—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1 (b).*

A co. were the occupiers of, and worked as one connected system, a tramway and a light ry., which were constructed in and along certain public streets and roads in the district of an urban council. The tramway was constructed under various local Tramway Acts and Orders and the light ry. under Orders made under the Light Railways Act, 1896. The tramway and the light ry. had a junction with each other and were worked by electricity on the overhead system. They were identical as to mode of construction and materials used, and the rails of each were laid level with the surface of the highway; the same carriages were used upon them and ran through the one on to the other, and the electrical energy used for working both the tramway and the light ry. was generated at the same power

**RATES (Railway)—continued.**

station and thence transmitted over a common system of cables and mains to sub-stations:—

*Held*, that the tramway was not a ry. within the meaning of s. 211, sub-s. 1 (b), of the Public Health Act, 1875, and that the co. were therefore not entitled in respect of their tramway to be assessed to the general district rate at one fourth only of its net annual value.

*Swansea Improvements and Tramway Co. v. Swansea Urban Sanitary Authority* [1892] 1 Q. B. 357, followed.

Decision of the C. A. [1912] 2 K. B. 216, reversed. *TOTTENHAM U. D. C. v. METROPOLITAN ELECTRIC TRAMWAYS, LD.* H. L. (E.)

[1913] A. C. 702; 11 L. G. R. 1071;

[1913] W. N. 255; 77 J. P. 413;

29 T. L. R. 720; 57 S. J. 739

See below, Rateable Value.

*Land used as a railway—Local Government—Rating—Liverpool Corporation Act, 1893* (56 & 57 Vict. c. 64, s. 36).

By the Liverpool Corporation Act, 1893, which authorized the corporation to make annually a general rate, to be levied on the net annual value of all property for the time being assessed to the relief of the poor, it was provided that "no person occupying land used only . . . as a railway made under the powers of any Act of Parliament for public conveyance" should be rated in respect of the same to the general rate in any greater proportion than one fourth part of the net annual value thereof.

The appellants were the owners of two goods stations in Liverpool, both of which were situated at a level of about 26 feet lower than their main lines of ry.; they were connected with the main line by an inclined line of rails down which wagons ran, and also by wagon hoists, up which wagons were always taken to the higher level:—

*Held* by Vaughan Williams and Kennedy L.J.J., that the sidings and turntables and the land thereunder, and the hoist houses and land thereunder, hoists, capstans and their machinery, were rateable as land used only as a ry. under this provision, but that the following items were not so rateable:—the roof over lines directly productive, the roof over loading platforms and mounds, the roof over loading ways or roads, the loading ways or roads and the land thereunder, the loading platforms or mounds and the land thereunder, cattle loading platforms or mounds and the land thereunder, and approach roads to loading ways or roads and the land thereunder.

*Per* Joyce J.: All the items, except the approach roads, were rateable as land used only as a ry. *LANCASHIRE AND YORKSHIRE RY. CO. v. LIVERPOOL CORPORATION* - - C.A. [1913] 3 K. B. 247; 82 L. J. (K. B.) 1096; 11 L. G. R. 932; 108 L. T. 872; 77 J. P. 305; 57 S. J. 557

**Rateable Value.****Deductions.**

*Canal—Subjacent coal mines—Expenses of prevention of subsidence—Parochial principle—Distribution of expenses—Parochial Assessments Act, 1836* (6 & 7 Will. 4, c. 96), s. 1.

A canal passed through eighty-nine parishes

**RATES (Rateable Value)—continued.**

and fourteen unions, and in many of the parishes over subjacent coal mines. 6809 yards of the canal were situated in the township of I., where there were very considerable coal workings, which, from time to time, caused subsidences in the canal, towing paths, bridges, locks and culverts.

In making the poor rate and valuation list on which it was based for the parish of I., the overseers and assessment committee estimated the gross rental and rateable value by assessing the portion of the canal and towing path in the township as a separate hereditament and allowing certain deductions for the expense of maintenance, but they refused to recognize as a deduction permitted by s. 1 of the Parochial Assessments Act, 1836, the expenditure actually incurred by the co. in the maintenance and dredging of the canal, the maintenance of locks and bridges in the township, and repairs and prevention of damage caused by subsidences.

*Held*, that the above expenses claimed by the canal co. as deductions in the township of I. must be distributed over their whole system, and could not be as a whole debited to I. where the expenditure had taken place. *LEEDS AND LIVERPOOL CANAL CO. v. WIGAN UNION* - - Div. Ct. 11 L. G. R. 634

*Flats—London—Poor rate—Valuation—Houses and buildings let out in separate tenements—Rateable value—Deductions from gross value—Valuation (Metropolis) Act, 1869* (32 & 33 Vict. c. 67), Sched. III.

By s. 52 of the Valuation (Metropolis) Act, 1869, it is enacted that in calculating the rateable value of hereditaments for the purposes of the Act, the percentage or rate of deductions to be made from the gross value shall not exceed the amounts in the Third Schedule to the Act.

The Third Schedule, which shews the several classes into which the hereditaments inserted in a valuation list are to be divided and the maximum rate of deductions to be made in respect thereof, contains in a footnote a provision that the maximum rate of deductions prescribed in the schedule shall not apply to houses or buildings let out in separate tenements.

A certain co. were the owners of buildings consisting of two blocks divided into flats. Each flat was self-contained and had its own front door opening on to a common staircase. The staircases were lighted and cleaned and lifts for the use of tenants were worked by servants employed by the co. Each flat was in the separate occupation of a tenant holding under a lease or agreement and having a separate rateable occupation of his flat. Each tenant was entered in the valuation list as the rateable occupier and was rated in respect of his occupation. The co. were not entered in the valuation list as occupiers, and were not rated as occupiers, either of the blocks or of the flats. The blocks were not nor was either of them separately valued in the valuation list. The flats were entered in the valuation list and valued as separate rateable hereditaments.

In calculating the rateable value of the flats the assessment committee made deductions from the gross value as directed by the Third Schedule to the Act. The co. contended that



**RATES (Rateable Value)—continued.**

the blocks were houses or buildings let out in separate tenements within the meaning of the footnote to the schedule, and that the deductions specified in the schedule did not apply:—

*Held*, that the case was governed by *Western v. Kensington Assessment Committee* [1908] 1 K. B. 811, that the blocks were houses or buildings let out in separate tenements within the meaning of the footnote to the schedule, and that the contention of the co. was correct. **CONSOLIDATED LONDON PROPERTIES, LD. v. ST. MARYLEBONE ASSESSMENT COMMITTEE. C. A. [1913] 3 K. B. 230; 82 L. J. (K. B.) 972; [1913] W. N. 169; 77 J. P. 357**

**Railway.**

*Branch line connected with lines of other companies—Transfer of traffic from branch in consequence of agreement for restricting competition between companies—Possible hypothetical tenants.*

An agreement had been entered into between the M. Ry. Co. and the L. and N. W. Ry. Co. for stopping wasteful competition between the two cos. in relation (inter alia) to a certain line of ry. owned by the L. and N. W. Co., over which the M. Co. and others had running powers. On an appeal by the L. and N. W. Co. to quarter sessions against a poor rate on the ground that the line in question was over-assessed, there was evidence that the effect of the agreement had been to transfer traffic, formerly carried over the line by the L. and N. W. Co., to the M. Co. The quarter sessions found that the line had a competitive value, and that a hypothetical tenant might reasonably be expected to give a sufficient rent for the line to support the assessment, and dismissed the appeal subject to a case:—

*Held*, confirming the decision of the quarter sessions, that the existence of the agreement did not eliminate from consideration the competitive value of the line, nor preclude either the L. and N. W. or the M. Co. from being regarded as a possible hypothetical tenant of such line, but on the contrary supported the view that the line had such a value. **LONDON AND NORTH WESTERN RY. v. THRAPSTON UNION. Div. Ct. 10 L. G. R. 1067; 107 L. T. 788; 77 J. P. 25; 29 T. L. R. 21**

*Link line—Rating—Right to take into consideration extraneous circumstances—Position, connections, and accommodation.*

The appellants, a joint committee of six ry. cos., were lessees in perpetuity of a link line joining up their respective systems at a rent equal to 56 per cent. of the gross profits of the line with a minimum of 30,000l. per annum. In the quinquennial valuation list for 1905 the rateable value of a portion of the line had been fixed at 3326l. In every year since 1884 the tenancy and working of the line had resulted in a loss to each of the lessee cos. Between 1904 and 1909 the gross receipts shewed a fall of 28 per cent. and a reduction in working expenses of 8 per cent. only. Since 1907 the expenses, exclusive of rent, had exceeded the receipts.

Upon an appeal to quarter sessions against the assessment in the quinquennial valuation

**RATES (Rateable Value)—continued.**

made in 1910, evidence was given that the line was being worked at a loss and that none of the cos. concerned would give any rent for the line whatever, if it were vacant and to let. The Court of quarter sessions took the figures of 1905 as the basis of their calculation for 1910 and, after taking into account the position, connections, and accommodation of the line and the possible competition for a tenancy thereof, fixed the rateable value in the parish in question at 1995l. The Div. Ct. affirmed this decision.

The joint committee appealed to the C. A. on the grounds (1.) that it was decided in *Great Central Ry. v. Banbury Union* [1909] A. C. 78, that the parochial principle was alone applicable to rating a link line of ry., and that the line ought to be assessed at a nominal value only; and (2.) that the Court of quarter sessions was not entitled to take into consideration the extraneous circumstances, such as the position, connections, and accommodation of the line:—

*Held*, affirming the decision of the Div. Ct., that there was nothing in *Great Central Ry. v. Banbury Union* to affect the decision in the present case, and that the Court of quarter sessions had not gone wrong in taking the extraneous circumstances into consideration.

*Great Central Ry. v. Banbury Union* [1909] A. C. 78, considered and explained. **EAST LONDON RY. JOINT COMMITTEE v. GREENWICH UNION ASSESSMENT COMMITTEE; SAME v. BERMONDSEY ASSESSMENT COMMITTEE; SAME v. STEPNEY ASSESSMENT COMMITTEE. C. A. [1913] 1 K. B. 612; 82 L. J. (K. B.) 297; 11 L. G. R. 265; 107 L. T. 805; [1913] W. N. 2; 77 J. P. 153; 29 T. L. R. 171**

**Sewage Farm.**

*Sewage farm—Evidence of possible alternative and cheaper scheme of sewage disposal.*

On an appeal to quarter sessions by the occupier of a sewage farm against a poor rate on the ground that the farm was over-assessed, the appellant contended that the possibility of substituting another and cheaper system of sewage disposal, as compared to the existing system, should be taken into consideration, and that the cost and capital value of the existing land and works was no evidence of their rateable value. He produced evidence that the bacterial system was now in greater favour than the broad irrigation system in use at the farm, and would afford a great saving by needing a much smaller area of land, and by being carried out by gravitation instead of by pumping. But he admitted that the sewerage board had never formulated the suggested alternative scheme and that the figures produced were founded upon approximate estimates only. The quarter sessions were of opinion that the evidence as to the alternative scheme was too uncertain for them to act on and dismissed the appeal:—

*Held*, that although evidence as to the non-existent alternative scheme was not inadmissible, the quarter sessions, having heard and considered that evidence, were not bound by it,

**RATES (Rateable Value)—continued.**

but could properly come to the conclusion that it was too uncertain for them to act upon it as shewing the true annual value of the hereditament. *HALL v. SEISDON UNION*

Div. Ct. 11 L. G. R. 48 ; 77 J. P. 17

**Tramway.**

*London—Reduction of value of tramways through competition of motor omnibuses—Provisional list—Mandamus to assessment committee to appoint valuer—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47.*

Rule nisi for mandamus, at the instance of the London County Council, directed to the Islington Assessment Committee, under s. 47 of the Valuation (Metropolis) Act, 1869, to appoint a valuer to make a provisional valuation list shewing the reduction in the rateable value of the London County Council tramways in the borough of Islington, owing to the competition of motor omnibuses.

Owing to the competition of motor omnibuses the receipts from the tramways had fallen considerably in 1912 and 1913, whereupon the London County Council served on the Islington Borough Council, as overseers of the parish, a requisition calling upon them to send to the assessment committee a provisional valuation list shewing the reduction in the valuation of the tramways. The borough council having declined to accede to this requisition, the London County Council made application to the assessment committee to appoint a valuer; but that body came to the conclusion that there was "no prima facie evidence of such a reduction [in value] as is contemplated by the section," and they declined to appoint a valuer, whereupon the present rule was obtained.

The Div. Ct. made the rule absolute. They held that s. 47 of the Valuation (Metropolis) Act, 1869, referred to an increase or reduction in value during the year in which the requisition to the overseers or assessment committee was made, and not to an increase or reduction from the amount appearing in the quinquennial valuation list. They also held that there was prima facie evidence of a reduction in value of the tramways of a permanent nature, and that the conclusion arrived at by the assessment committee was wrong in law. Rule absolute. *REX v. ISLINGTON ASSESSMENT COMMITTEE. Ex parte L. C. C.* - - Div. Ct. [1913] W. N. 361 ; 30 T. L. R. 149

**Tramway.**

See **Rateable Value.**

**Valuation.**

See above, **Rateable Value.**

**Valuation (Metropolis) Act, 1869.**

See above, **Rateable Value.**

**Water Rate.**

See **WATER.**

**RATING.**

See **RATES.**

**REAL PROPERTY LIMITATION ACTS.**

See **LIMITATIONS, STATUTES OF.**

**REBUILDING—Building line.**

See **LOCAL GOVERNMENT—Building.**

—Charity—Hospital—Consecrated chapel—Rebuilding—New chapel—Effect of consecration.

See **CHARITY—Hospital Chapel.**

**RECEIVER**—Administration—Insolvent estate—Executor sufty for testator—Right of indemnity—Right of retainer.

See **EXECUTOR.**

—Appointment—Company—Debenture-holders.

See **COMPANY—Debentures.**

—Bankruptcy—Jurisdiction—Costs—Official receiver—Unsuccessful application by—Order to pay costs personally.

See **BANKRUPTCY—Costs.**

—Company—Receiver and manager—Appointment by debenture-holders—Notice of preferential claim—Subsequent payments to ordinary creditors in carrying on business—Loss of assets—Liability to preferential creditor.

See **COMPANY.**

—Company—Suit by assignees from receivers of a company not in liquidation—Contracts by the debtors with the company—Right of set-off in respect of damages for breach—Appeal from Ontario.

See **COMPANY—Debentures and SET-OFF.**

—Mortgage.

See **MORTGAGE—Receiver.**

—Railway.

See **RAILWAY.**

—Tithe rent-charge—Recovery—Distress or receiver—Owner in occupation of part only of the lands.

See **TITHE RENT-CHARGE.**

**RECEIVING ORDER.**

See **BANKRUPTCY and WILL—Forfeiture.**

**RE-CERTIFICATION—Workmen's compensation**

—Contracting out—Scheme of compensation—Ballot—Jurisdiction of county court judge.

See **WORKMEN'S COMPENSATION—Contracting Out.**

**RECOGNIZANCE.**

See **CRIMINAL LAW—Sentence.**

**RECONSTRUCTION—Company.**

See **COMPANY—Reconstruction.**

**RECORD—Court of.**

See **APPEAL—Railway and Canal—Commission.**

**RECORD OFFICE**—Copies from—Evidence—Maps.

See **MARKET.**

**RECOVERY**—Payment under compulsion of law  
—Legal process in a foreign country—  
Action for recovery of money.  
*See MONEY HAD AND RECEIVED.*

**"REDEEMABLE"**—Loan—Borough—Issue of  
redeemable stock by municipal corporation.  
*See SCOTTISH LAW—Loan.*

**REDEMPTION**—Debentures—Company.  
*See COMPANY—Debentures.*

— Land tax—Exoneration—Land abutting on  
highway—Presumption that soil of highway  
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**REPUTED OWNERSHIP**—Bill of sale—Bankruptcy of grantor before default in payment—Irish Bankrupt and Insolvent Act, 1857, s. 313.

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**RESIDUE**—Gift of residue to forty-six named persons—Codicil—Revocation of gift to two of the number—Confirmation of will—No intestacy.

• See WILL—Codicil.

**RES JUDICATA**—Divorce—Desertion—Appeal from justices—Second summons—Wife's costs.

See DIVORCE—Desertion.

— Workmen's compensation — Original application — Weekly payment ended by arbitrator—Second application for compensation — Power of arbitrator to award again.

See WORKMEN'S COMPENSATION.

**RESTITUTION OF CONJUGAL RIGHTS.**

See DIVORCE.

C.C.D.

**RESTRAINT OF TRADE**—Agreement by employee not to be engaged in business the same as or similar to that of employer—Reasonableness of restriction—Vagueness—Injunction.

By a contract for the employment of the deft. as canvasser by the plts., a clothing and supply co. having branches all over England, described in the contract as carrying on business on the check and credit system “at London in the county of Middlesex (amongst other places),” the deft. agreed that he would not within three years after the termination of the employment be in the employ of any person, firm, or co. carrying on or engaged in a business the same as or similar to that of the plt. co., or assist any person employed or assisting in any such business, “within twenty-five miles of London aforesaid where the co. carry on business” :—

*Held*, assuming, without deciding, that the agreement was not too vague as regards the area of restriction to be enforced by injunction, that the restriction was wider than was reasonably necessary for the plts.' protection.

Decision of the C. A. [1913] 1 K. B. 65, reversed. *MASON v. PROVIDENT CLOTHING AND SUPPLY CO.* - H. L. (E.) [1913] A. C. 724; 82 L. J. (K. B.) 1153; 109 L. T. 449; [1913] W. N. 257; 29 T. L. R. 727; 57 S. J. 739

*Clause in partnership articles*—Breach—Auctioneers and estate agents—Prohibition against carrying on or engaging in business of similar nature—Radius of one mile—Office opened by defendant outside prohibited radius—Business carried on within—Injunction.

The plt. and deft. carried on in partnership the business of auctioneers, house and estate agents, and valuers from 1900 till 1912, when the partnership was terminated.

The articles of partnership provided that an outgoing partner or expelled partner should not for the term of ten years from the time of the dissolution of the partnership carry on or engage or be interested directly or indirectly either as principal or as servant or agent of another in any business of a nature similar to or competing or interfering with the business of the partnership or any part of such business within a radius of one mile from the premises of the partnership.

The deft. took an office just outside the prohibited radius and there carried on in his own name the business described as that of auctioneer, house and estate agent, and valuer.

The deft. admitted that he had, and he claimed the right to, put up boards within the prohibited radius, and to communicate with persons therein, and to do these acts systematically.

*Held*, that, having regard to the claim by the deft. to do as of right what he was systematically doing, the plt. ought to be protected by an interim injunction until the trial of the action.

*Turner v. Evans* (1853) 2 Ell. & Bl. 512; 2 De G. M. & G. 740, considered and applied.

Decision of Eve J. reversed. *DAYER-SMITH v. HADSLEY* - C. A. 108 L. T. 897; 57 S. J. 555

*Contract*—Agreement of service—Construction—Secret process—Qualified covenant—Validity

**RESTRAINT OF TRADE—continued.**

—*Reasonableness*—*Severable contract*—*Onus of proof*—*Injunction*.

*Caribonum Co. v. Le Couch*, appeal from the decision of Eve J. 109 L. T. 385, affirmed.  
**CARIBONUM CO., LD. v. LE COUCH - C. A. 109 L. T. 587**

*Contract—Illegality not pleaded—Duty of Court.*

The plts. agreed to buy from the defts. 72,000 tons of salt to be manufactured by the defts.; the agreement was by a contract in writing which the majority of the C. A. held to be on the face of it illegal and unenforceable, as being in restraint of trade. The plts. sued the defts. for breaches of the contract; the defts. in their defence did not plead the illegality of the contract:—

*Held*, that in order to raise the question of the illegality of the contract it was not necessary that the defence of illegality should be pleaded, the Court being bound to deal with illegality apparent on the face of the contract. **NORTH-WESTERN SALT CO., LD. v. ELECTROLYTIC ALKALI CO., LD. - C. A. [1913] 3 K. B. 422**

—*Contract or combination in restraint of trade*—*Monopoly*—*Australian Industries Preservation Act, 1906, ss. 4, 7, 10, 15A.*  
*See AUSTRALIA.*

*Covenant—Meat importers—Other business similar to that of employer—Severance of covenant—Reasonableness—Area of restraint—Time limit of twelve months—Injunction.*

This was an action in which the plt. co. claimed (1.) an injunction to restrain the deft. Walker from inducing the deft. Foreman to enter into his employment or to be engaged in his business of meat importer; and (2.) an injunction to restrain the deft. Foreman from entering the employment of the deft. Walker.

The plt. co. had moved for an injunction until the trial, and it was then directed that the question whether the deft.'s covenant was void or unenforceable as being in undue restraint of trade should be tried as a separate issue under Order XXXVI., r. 8. The issue now came on to be tried accordingly.

By the agreement in question, dated Dec. 31, 1908, the co. agreed to employ the deft. Foreman as manager of the co. at Liverpool for five years from Jan., 1909, and it was thereby provided that the manager should not for a period of one year after the determination of the agreement, whether by effluxion of time or in any other way whatsoever, either solely or jointly with or as agent for any other person, firm or co., directly or indirectly carry on, or be engaged, concerned or interested in carrying on, within the United Kingdom the trade or business of an importer of meat or an agent for importers of meat, or any other trade or business similar to any trade or business carried on during the period of his employment by the co. (except with the consent in writing of the directors for the time being).

It was admitted that the second branch of this covenant was too wide, but it was contended that the covenant was severable and that the first branch was not too wide and was enforceable by injunction.

**RESTRAINT OF TRADE—continued.**

Sargant J. held that the two parts of the covenant were express<sup>ly</sup> in such a way as to amount to a clear severance by the parties themselves, and that the observations of Lord Fletcher Moulton in *Mason v. Provident Clothing Supply Co.* [1913] A. C. 724, at p. 749, were not intended to apply to such a case as the present; but dealing with the first branch of this covenant alone, having regard to the nature of the plt. co.'s business at the time when the covenant was entered into and the facts in evidence, his Lordship held that the area of restraint extending to the whole of the United Kingdom went beyond anything that was reasonably required for the protection of the plt. co.'s business, and that being so the time limit for one year did not make the covenant any better; *Ward v. Byrne* (1839) 5 M. & W. 548; and decided the issue adversely to the plt. co. **NEVANAS & CO. v. WALKER - Sargant J. [1913] W. N. 373**

*Covenant—Validity—Reasonableness—Dealing in indiarubber goods.*

The deft. was employed by the plts. as a traveller in their solid tyre department under an agreement which contained the following clause:—"On the termination by any means of this agreement the [defendant] shall not for a period of one year from the date of such termination either alone or jointly or in partnership, or in the service of any other person or persons, firm, or company whatsoever, directly or indirectly, either by himself or as agent, or otherwise carry on or manage, or be concerned, employed, or interested in the sale, purchase, manufacture or other dealings in indiarubber goods, whether wholesale or retail, in any part of the United Kingdom, Germany, or France." The deft. within one year after leaving the plts.' employment entered the service of another co. which was engaged in the sale of indiarubber goods in the United Kingdom, whereupon the plts. claimed an injunction:—

*Held*, that the covenant, considering the duration of the restriction, was not too wide or unreasonable for the protection of the plts.' business, except that part of it which related to Germany and France, in which countries the plts. sold no indiarubber goods, but that that part of the covenant could be severed from the other part; and therefore that the plts. were entitled to an injunction on that footing. The decision in *Baines v. Geary* (1887) 35 Ch. D. 154, is not reconcilable with the decision in *Baker v. Hedgecock* (1888) 39 Ch. D. 520; the view expressed in the latter case is the correct one.

**CONTINENTAL TYRE AND RUBBER (GREAT BRITAIN) CO., LD. v. HEATH**  
**Scrutton J. 29 T. L. R. 308**

*Covenant not to interfere with trade or customers served from particular dairy—Removal of dairy to other premises.*

The deft. was engaged as a servant by B., a dairyman, of Evelyn's Dairy, 160, Edward Street, New Cross, and the deft. agreed with B., his assigns and successors, that after quitting the service he would not interfere with the trade and the customers served by and from the dairy

**RESTRAINT OF TRADE—continued.**

aforesaid." The plts. purchased B.'s business, it being part of the agreement that B. should introduce the plts. to his customers. The premises at 160, Edward Street being found unsuitable, the plts. moved the premises to 95, High Street, Deptford, which was about the same distance from B.'s customers' houses as was 160, Edward Street. After being in the plts.' service for some time, the deft. left them and thereafter served customers of the plts. who had been introduced by B. The plts. claimed to restrain the deft. from committing a breach of his covenant by interfering with the plts.' trade or the customers served by and from the plts.' dairy at 95, High Street, Deptford :—

*Held*, that the action failed, as the covenant by the deft. only related to customers served by and from the premises at 160, Edward Street.

MARSHALL & MURRAY, LD. v. JONES  
Pickford J. 29 T. L. R. 351

**RESTRAINT ON ANTICIPATION—Divorce—Costs—Married woman—Separate property.**  
*See* DIVORCE.

**RETAINER** — Right of — Insolvent estate — Receiver—Executor surety for testator —Right of indemnity.  
*See* EXECUTORS.

**RETRACT**—Right to—Disclaimer—Trust legacy —Successive life interests.  
*See* DISCLAIMER.

**REVENUE.**

*Armorial Bearings.* *See* below, **Excise.**

*Corporation Duty, col. 514.*

*Estate Duty, col. 515.*

*Excise, col. 518.*

*Finance Acts, col. 521.*

*House Duty, col. 522.*

*Income Tax, col. 522.*

*Increment Value Duty, col. 536.*

*Inhabited House Duty.* *See* above, **House Duty.**

*Land Tax.* *See* LAND TAX.

*Land Values.* *See* above, **Increment Value Duty.**

*Legacy Duty, col. 539.*

*Licence Duty.* *See* below, **Licensed Premises.**

*Licensed Premises, col. 540.*

*Mineral Rights Duty, col. 540.*

*Reversion Duty, col. 544.*

*Settlement Estate Duty, col. 546.*

*Stamp Duty, col. 547.*

*Super-tax.* *See* above, **Income Tax.**

*Undeveloped Land Duty, col. 548.*

**Armorial Bearings.**

*See* below, **Excise.**

**REVENUE—continued.****Corporation Duty.**

*Exemption—Charitable purposes.*

A Grand Lodge of Masons claimed exemption under sub-s. 3 of s. 11 of the Act 48 & 49 Vict. c. 51 in respect of the income of certain funds devoted to the relief of necessitous masons, or their dependants, at the discretion of the administering bodies. Every mason by whom, or by whose dependants, benefit was received from the funds had to some degree contributed thereto through his lodge, but the funds were largely derived from other sources than such contributions, and the great proportion of each individual mason's contributions to his lodge did not go to these funds.

*Held*, that the exemption applied.

*The Incorporation of Tailors in Glasgow v. Inland Revenue Commrs.* (1817) 14 R. 729, and *In re Linen and Woollen Drapers* (1887) 58 L. T. 949, distinguished. **MASONS OF SCOTLAND (GRAND LODGE) v. INLAND REVENUE COMMRS.** Ct. Sess. (Sc.) 6 T. C. 116

*Mortgage—Property belonging to a vested in any body corporate or unincorporate—Trustees—Permanent trusts—Fund for redemption of debenture stock issued by corporation—Liability of income of fund to duty—Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), ss. 11, 12.*

In June, 1897, the corporation of the City of London, for the purpose of paying off a debenture debt and of raising further moneys, created an issue of debenture stock. In connection with the issue an indenture was executed on June 24, 1897, between the corporation and certain officials of the City of London, who (including their successors in office) were described as "the trustees," to secure the redemption of the proposed stock.

By the indenture the corporation charged in favour of the trustees in trust for the stockholders all rents and income derived from their freehold and leasehold estates, and also other income of the corporation, with the payment of all moneys for the time being owing on the security of the indenture. It was also provided that for better securing and providing for the redemption of the stock the corporation should out of their annual income, after providing for the annual interest on the stock, set aside, on Jan. 1 and July 1 in every year, so long as any of the stock should remain unredeemed, half-yearly sums of 7500*l.*, and should invest all such half-yearly sums and the resulting income thereof from time to time : and that the fund so created should be applied by the corporation towards the redemption of the stock, after it should have become redeemable. The stock was redeemable in 1927, or, if not previously redeemed, in 1957. Certain powers were conferred upon the trustees in case of default by the corporation in the performance of their obligations under the indenture. Since the date of the deed the half-yearly sums of 7500*l.* had been regularly invested in the purchase of stock in the names of the trustees. The dividends and interest

**REVENUE (Corporation Duty)—continued.**

from the investments were as they arose applied by the Bank of England in the purchase of similar stocks. The purchases and investments were made with the consent of the corporation and at the request of the trustees. This sinking fund now amounted to a large sum, partly invested in India  $2\frac{1}{2}$  per cent. Stock, and the Crown claimed 75% 19s., being the corporation duty on the income of the India Stock for the year :—

*Held*, affirming on this point the decision of Horridge J. [1913] 1 K. B. 201, that the equity of redemption in the fund belonged to the corporation; and that the income of the India Stock ought to be brought into account in the Crown's account against the corporation for corporation duty. ATT.-GEN. v. CITY OF LONDON CORPORATION - C. A.

[1913] 2 K. B. 497; 82 L. J. (K. B.) 698;  
108 L. T. 661; [1913] W. N. 147;  
29 T. L. R. 494

**Estate Duty.**

— Administration. See ADMINISTRATION.

Advwson, col. 515.

Aggregation, col. 516.

Exemption, col. 517.

Heirlooms, col. 518.

Incidence, col. 518.

**Administration.**

— Adjustment of accounts between tenant for life and remainderman.

See ADMINISTRATION.

**Advwson.**

*Proceeds of sale—Succession Duty Act, 1853* (16 & 17 Vict. c. 51), s. 24—*Finance Act, 1894* (57 & 58 Vict. c. 30), s. 15, sub-s. 4.

Sect. 15, sub-s. 4, of the Finance Act, 1894, provides that estate duty shall not be payable in respect of any advwson which would have been free from succession duty under s. 24 of the Succession Duty Act, 1853.

Sect. 24 of the Succession Duty Act, 1853, provides that "A successor shall not be chargeable with duty in respect of any advwson . . . comprised in his succession unless the same . . . shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth, for which the same . . . shall be so disposed of, at the time of such disposal."

H., who died in 1898, by his will settled property, including certain advwsons, upon his son C. for life, with remainder to his grandson W. for life, with remainders over. C. died in 1901 without having sold the advwsons. In 1909 W., in exercise of his powers as tenant for life under the Settled Land Acts, sold the advwsons, and the proceeds of sale were paid, to the trustees of H.'s will. The advwsons were not included in any estate duty account rendered in connection with the death of either H. or of C. Upon a claim by

**REVENUE (Estate Duty)—continued.**

the Crown that, upon the sale of the advwsons, estate duty and settlement estate duty became payable as on the death of H., or alternatively as on the death of C. upon the amount of the proceeds of sale, or alternatively, upon the principal value of the advwsons as at the death of H., or alternatively of C. :—

*Held*, affirming the decision of Hamilton J. [1912] 2 K. B. 192, that neither estate duty nor settlement estate duty was payable upon the principal value of the advwsons nor upon the proceeds of sale thereof. ATT.-GEN. v. PEEK - C. A. [1913] 2 K. B. 487; 82 L. J. (K. B.) 767; 108 L. T. 744; [1913] W. N. 123

**Aggregation.**

*Property passing on death—Finance Act, 1894* (57 & 58 Vict. c. 30), s. 5, sub-s. 3—*Finance Act, 1900* (63 Vict. c. 7), s. 12, sub-s. 2.

Information by the Att.-Gen. claiming that estate duty on 10,000*l.* passing on the death of F. J. Thynne in 1910 should be paid at the rate of 9 per cent., and not at the rate of 4 per cent. as offered by the deft.

In 1864, on the occasion of the marriage of E. S. to F. J. T., a marriage settlement was executed by which E. S. settled 10,000*l.*, to which she was entitled in reversion subject to the life interests of M. S. and R. B. S. respectively, upon trustees to pay thereout during the joint lives of herself and her husband 200*l.* a year to herself, to be raised in a certain event to 300*l.* a year, and after the death of herself or her husband to pay the income to the survivor, and on the death of the survivor to hold the trust fund upon trust for their children as they jointly, or in default of joint appointment the survivor, should by deed or will appoint.

E. T. died in 1876, M. S. in 1884, R. B. S. in 1888, F. J. T. in 1910, and the latter by his will appointed the trust funds to certain of the children.

The question in this case turned on s. 12, sub-s. 2, of the Finance Act, 1900, which provides that "where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I. of the Finance Act, 1894, and such property would, if the disponent had died after the commencement of the said part, have been liable to estate duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one-half per cent. in excess of the rate at which duty would have been payable, if such settled property had been treated as an estate by itself."

It was contended for the Crown that s. 12, sub-s. 2, must be applied to this case as if it said "if the disponent had died after the commencement of" Part I. of the Act of 1894 in the actual circumstances under which the death of the disponent (E. T.) had taken place, i.e., in the lifetime of M. and R. B. S., and that the property would then have still been in reversion and estate duty would not then have been payable.

**REVENUE (Estate Duty)—continued.**

It must, therefore, be aggregated with the other property of F. J. T. in which case 9 per cent. was the proper rate of duty to be charged.

It was contended for the debt. that the only death to be postponed was that of E. T., and that if she had died in 1894, the 10,000*l.* would have been property in possession, as M. and R. B. S. would have predeceased her. The property could not therefore be aggregated into that of F. J. T. and duty was payable at the rate of 4 per cent. only.

Scrutton J. held that the contention of the Crown was erroneous and that the contention of the debt. was correct. Judgment for debt. *ATT-GEN. v. THYNNE - Scrutton J. [1913] W. N. 377*

**Exemption.**

*Settled property—Marriage settlement—Covenant to settle after-acquired property—Probate duty—“Personal property settled by a disposition”—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 21, sub-s. 1.*

The payment of probate duty in respect of personal property bequeathed by a testator dying before the coming into operation of the Finance Act, 1894, to a legatee already bound by a covenant in his marriage settlement to settle such property, does not exempt the property from liability to pay estate duty under the settlement, such a case not falling within the terms of s. 21, sub-s. 1, of the Finance Act, 1894. *In re VISCOUNTESS TORRINGTON - Eve J. [1913] 2 Ch. 623; 109 L. T. 541; [1913] W. N. 271; 29 T. L. R. 742; 57 S. J. 730*

*Liability—Recoupment—Covenant to settle sum—Debt unpaid at death—Settlement registered in Victoria—English and Australian assets—Duty on registration—Right to resort to Victorian assets—Right of deduction from debt—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1; s. 2, sub-s. 1 (c); s. 6, sub-s. 2; s. 7, sub-s. 1 (a), 2; s. 8, sub-s. 4; s. 9, sub-s. 1, 4.*

D. in 1890 covenanted to pay 20,000*l.* to the trustees of his marriage settlement, to be held as to one moiety upon trust for himself for life, remainder to his wife for life, and as to the other moiety upon trust for his wife for life with remainder to himself for life, with remainder as to the whole fund to the children of the marriage, and died in 1911 without having paid the 20,000*l.*, which with an arrear of interest was still owing to the trustees.

He left estate in England and Australia, apart from assets in Victoria, of more than 45,000*l.* His executors registered the marriage settlement in Victoria, thereby reducing the duties payable in the colony by the duties which would have been payable there on the 20,000*l.* debt and rendering the covenant in the settlement enforceable against the testator's Victorian assets.

They also paid estate duty on the testator's estate without deducting the 20,000*l.* debt, but with a deduction in respect of the duties paid in Australia.

The executors claimed to deduct from the 20,000*l.* as against the settlement trustees, (a) a rateable part of the estate duty paid in

**REVENUE (Estate Duty)—continued.**

England on the 20,000*l.*; (b) the registration duty paid in Victoria:—

Held, following *In re Gray, Gray v. Gray*, [1896] 1 Ch. 620, that the 20,000*l.* being an unpaid debt to the trustees at D.'s death, they were not liable for any part of the estate duty, in respect of it, and that although the executors had acted properly in registering the settlement in Victoria, yet in so doing they were not agents for the trustees, who had no need to resort to the Victorian assets, and were not liable to pay part of their debtor's probate duty, and neither amount could be deducted from the 20,000*l.*, which must be paid in full. *In re DOWLING. DOWLING v. FENWICK - Eve J. 108 L. T. 672*

**Heirlooms.**

*Settlement—Objects of national interest.*

Held, that no part of the testator's general personal estate should be set aside or retained to provide for estate duty or other duty in respect of certain heirlooms settled by his will, which had been certified to be of national, scientific, historic, or artistic interest.

*In re Leconfield* (1904) 20 T. L. R. 347, followed. *In re LORD SWAYTHLING. SAMUEL v. SWAYTHLING - Neville J. 29 T. L. R. 88; 57 S. J. 173*

**Incidence.**

*Testator entitled to reversionary interest in settled fund—“Competent to dispose of”—Duty payable out of settled fund or testator's residue—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2; s. 6, sub-s. 2; s. 7, sub-s. 6, 7; s. 8, sub-s. 3, 4; s. 9, sub-s. 1; s. 22.*

Under a settlement made in 1902 certain funds were vested in trustees upon trust for the testator for life and on his death for his widow for life, and subject thereto for the testator absolutely. By his will dated in 1907 the testator disposed of his interest in the settled funds. Upon his death in 1908, leaving his widow surviving, the question arose whether the estate duty upon the testator's reversionary interest in the settled funds was payable out of his residuary personal estate as testamentary expenses, or out of the settled funds:—

Held, reversing the decision of Warrington J., that as between the beneficiaries under the will the duty was payable out of the residuary personal estate.

*In re Dixon* [1902] 1 Ch. 248, overruled. *In re AVERY. PINSENT v. AVERY - C. A. [1913] 1 Ch. 208; 87 L. J. (Ch.) 434; 108 L. T. 1; [1912] W. N. 283; 57 S. J. 112*

**Excise.**

*Armorial Bearings, col. 518.*

*Club, col. 519.*

*Mule Serrants, col. 520.*

**Armorial Bearings.**

*Ancient City Guild—Arms stamped on official notepaper—Exemption of “corporation or royal burgh”—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19, 27.*

An ancient City Guild, incorporated by



**REVENUE (Excise)—continued.**

charter, is not a "corporation" within the meaning of s. 19, sub-s. 1, of the Revenue Act, 1869, and therefore is not exempted from the taking out of a licence under s. 18 of the Act in respect of the use of armorial bearings on its official notepaper. *PLUMBERS' CO. v. LONDON C. C.* - Div. Ct. 11 L. G. R. 480; 23 Cox, C. C. 355; 108 L. T. 655; [1913] W. N. 116; 77 J. P. 302; 29 T. L. R. 427

**Club.**

*Registered club—Supply of intoxicating liquors to—Basis on which duty payable by club—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 48, sub-s. 1.*

The suppliant was the secretary of a club duly registered under the Friendly Societies Acts and the Licensing Acts.

The Finance (1909-10) Act, 1910, s. 4, sub-s. 1, enacts that "It shall be the duty of the secretary of every registered club to deliver to the Commissioners [of Customs and Excise]

... a yearly statement of the purchases during the preceding calendar year of intoxicating liquor to be supplied in or to the club or on behalf of the club to the members thereof in such form and containing such particulars as may be prescribed by the Commissioners, and every such statement shall be charged with an excise duty of sixpence for every pound of the purchases shown in the statement."

The suppliant delivered to the Commrs. a statement of purchases of intoxicating liquors supplied to the club for the year 1910, which shewed that the sum of 537l. 3s. 3d. was paid of payable in respect of such purchases. The prices paid were all duty-paid prices in the sense that custom or excise duty had in some form or other been paid upon the liquors themselves or upon other liquors from which the liquors in question had been derived by blending or otherwise.

According to the suppliant's case, 361l. 18s. 5d. of the total sum of 537l. 3s. 3d. represented the net cost of the intoxicating liquors apart from duty, and the sum of 175l. 7s. 10d. represented duty.

Upon behalf of the club the suppliant paid to the Commrs. the sum of 9l., that being the amount of 6d. in the pound on the net cost of the intoxicating liquors supplied to the club apart from the excise duty. Subsequently, under protest, he paid to the Commrs. a further sum of 4l. 8s. 6d., being at the rate of 6d. in the pound on 175l. 7s. 10d., the sum alleged by the suppliant to represent excise duty.

It was contended on behalf of the suppliant that the sum of 4l. 8s. 6d. was not due from the club, and that the Finance (1909-10) Act, 1910, s. 48, sub-s. 1, did not require that the duty of 6d. in the pound payable upon the purchases of intoxicating liquors should be paid upon the actual or gross price of such liquors, but only upon so much of such prices as was not attributable to duty.

*Held*, that the statement contemplated by the Finance (1909-10) Act, 1910, s. 48, sub-s. 1, must be prepared by setting out the actual price paid to the merchants for the

**REVENUE (Excise)—continued.**

liquor supplied to the club, and that the duty must be paid upon every pound of purchase money appearing in that statement, notwithstanding that in the price so paid there might be included a duty already paid by the merchant. *CALLAWAY v. REG*

Atkin J. 108 L. T. 1029; [1913] W. N. 201; 29 T. L. R. 603

**Male Servants.**

*Driver of vehicle conveying children to school—"Coachman"—Inland Revenue—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19.*

The respondent was a carman and contractor, and was under contract with the appellants to convey in certain omnibuses and ambulances supplied by the appellants, and drawn by horses supplied by the respondent, defective children from their homes to public elementary schools. The drivers of the vehicles were employed by, and were in the exclusive service of, the respondent:—

*Held*, that the drivers were not coachmen within the meaning of s. 19, sub-s. 3, of the Revenue Act, 1869, and that the respondent was, therefore, not liable to pay in respect of them the duty imposed by s. 18 of the Act on "male servants" as defined by s. 19, sub-s. 3. *LONDON C. C. v. ALLEN* - Div. Ct. [1913] 1 K. B. 9; 82 L. J. (K. B.) 432; 10 L. G. R. 1089; 23 Cox, 266; 107 L. T. 853; 77 J. P. 48; [1912] W. N. 256; 29 T. L. R. 30

*Groom—Man employed at stud farm and to be generally useful—Employment in trade or business—Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19—Customs and Inland Revenue Act, 1876 (39 Vict. c. 16), s. 5.*

The respondent, a farmer and breeder of horses, advertised for a "groom, single, to live in, able to ride and drive and make himself generally useful," and engaged a man on those terms. Upon proceedings against him for employing a male servant without licence, justices, having heard the evidence adduced before them as to the man's daily occupations and employment, found as a fact that the man was employed by the respondent in the capacity of a groom and a general servant, and that the major part of his duty was attending to horses kept by the respondent in connection with his business as a farmer and horse breeder:—

*Held*, by Scrutton J. and Bailhache J. (Ridley J. dissentiente), that the man was not a groom within the meaning of s. 19, sub-s. 3, of the Revenue Act, 1869, and that the respondent was therefore not liable to pay in respect of him the duty imposed by s. 18 of the Act on "male servants" as defined by s. 19, sub-s. 3. *WOLFENDEN v. MASON* - Div. Ct. 11 L. G. R. 1243

*Tobacco manufacturer—Possession of tobacco which on being dried at temperature of 212 deg. F. decreases in weight by more than 32 per cent.—Customs and Inland Revenue Act, 1887 (50 & 51 Vict. c. 15), s. 4—Finance Act, 1904 (4 Edw. 7, c. 7), s. 3, sub-s. 2.*

The appellant, Hale, an officer of Customs and Excise, laid an information against the respon-

**REVENUE (Excise)—continued.**

deuts; Morris & Sons, Ltd., charging the respondents, being manufacturers of tobacco, with having in their custody and possession certain cut tobacco fit for sale, and that such tobacco, on being dried at a temperature of 212 deg. as denoted by Fahrenheit's thermometer, was decreased in weight by more than 32 per cent., contrary to the form of the statute in that case made and provided.

On Nov. 8, 1912, the respondents had in their possession in a large tub on their premises a quantity of cut tobacco fit for sale known as Dark Budget Shag. Between noon and 2 P.M. on the same day two officers of Customs and Excise (Nolan and Secker) visited the respondents' premises for the purpose of examining tobacco, and they took away a special sample of about two ounces for examination at the Government Laboratory. On examination in the Government Laboratory the figure of decrease for each of two portions of this sample was found to be 33·7 per cent., i.e. 1·7 per cent. in excess of the limit allowed by Act of Parliament. Each of the two portions just referred to was about half an ounce, and the remaining one ounce of the sample was not tested.

The magistrate found as a fact that the two half ounces of tobacco, part of the special sample taken by the two officers and actually tested, contained an unlawful amount of moisture, namely, 1·7 per cent. in excess of the percentage of decrease allowed by law; and probably the rest of the special sample was in the same condition. He further found that the special sample was fairly taken in the sense that the officers did not intend it to be unfair, but that it did not in fact fairly represent the bulk of which it was intended to be a sample, and that neither the tobacco in the tub as a whole nor any substantial portion of it contained more moisture than was allowed by law. The magistrate was of opinion that he ought not to convict, unless it was shewn that at least some substantial proportion of the bulk tested contained too much moisture, and he was not satisfied that more than one or two ounces out of some sixty or seventy pounds contained too much moisture. He therefore dismissed the information:—

*Held*, on appeal by way of case stated, that the magistrate ought to have convicted in respect of the portion which was found to contain more moisture than allowed by law. A single ounce might be a substantial portion. The words "any tobacco" in the Act would cover any quantity which was not too small to be recognized, or which was large enough to be dealt in by the public. Case remitted. *HALF v. MORRIS & SONS, LTD.* Div. Ct.

[1913] W. N. 288; 30 T. L. R. 9

**Finance Acts.**

See above, Estate Duty, Excise, and below, Income Tax, Increment Value Duty, Licensed Premises, Mineral Rights Duty, Reversion Duty, Settlement Estate Duty, and Undeveloped Land Duty.

**REVENUE—continued.****House Duty.**

*School buildings*—"Offices belonging to and occupied with any dwelling-house"—*House Tax Act, 1808* (48 Geo. 3, c. 55), Sched. B, r. 2.

The school buildings of a public school, which was not a charity school, consisted of a residential building in which the foundation scholars resided and which was used exclusively by them, and a building, structurally disconnected from it, containing a school room, class rooms, library, &c., which were used by all the boys attending the school, foundationers and non-foundationers alike. Both buildings were in the occupation of the governing body of the school. A number of the non-foundationers resided in certain masters' boarding-houses in the school precincts, which houses were in the occupation of the respective house-masters by whom they were kept:—

*Held*, that, for the purposes of the assessment to inhabited house duty of the building in which the foundationers resided, the school room and class rooms ought to be included in the valuation as being "offices belonging to and occupied with" the building to be assessed within the meaning of r. 2 of Sched. B to the House Tax Act, 1808, and none the less so because they were also used for the non-foundationers resident in the masters' boarding houses.

Decision of Horridge J. [1913] 1 K. B. 190, on this point, reversed. *REITH v. GOVERNING BODY OF WESTMINSTER SCHOOL*

C. A. [1913] 3 K. B. 129; 82 L. J. (K. B.) 861; 108 L. T. 701; [1913] W. N. 134; 6 T. C. 167; 29 T. L. R. 482; 57 S. J. 499

**Income Tax.**

*Appeal*, col. 522.

*Assessment, Notice of*, col. 523.

*Company*. See below, *Office and Residence*.

*Deductions*, col. 524.

*Distress*. See DISTRESS.

*Dividends*, col. 527.

*Exemption*, col. 527.

*Foreign Property*, col. 528.

*Office*, col. 530.

*Profits*, col. 531.

*Residence*, col. 532.

*Retention of Tax*, col. 534.

*Super-tax*, col. 535.

*Waterworks*. See above, *Profits*.

**Appeal.**

*Assessment of profits—Deprivation of profits on which computation made—Application to Commissioners for relief—Power to state a case—Appeal—Income Tax Act, 1842* (5 & 6 Vict. c. 35), s. 134—*Taxes Management Act, 1889* (43 & 44 Vict. c. 19), s. 59.

Appeal from a decision of Scrutton J. [1913] W. N. 310, that an application to the Commrs. for

**REVENUE (Income Tax)—continued.**

General Purposes under s. 134 of the Income Tax Act, 1842, for the amendment of an assessment of profits, upon the ground that during the year of assessment the applicant had been deprived of or lost the profits or gains on which the computation of duty charged in the assessment was made, is not an appeal against the assessment, and consequently the Commrs. have no power on such an application to state a case for the opinion of the High Court under s. 59 of the Taxes Management Act, 1880.

The C. A. affirmed the decision of Scrutton J. and dismissed the appeal. *FURTADO v. CITY OF LONDON BREWERY CO., LD.* - [1913]

**W. N. 354; [1914] 1 K. B. 152; 30 T. L. R. 177**

*Hearing before Commissioners—Right of Surveyor of Taxes to be present—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 57, sub-s. 7.*

Rule for certiorari to quash an order made by Commrs. of Income Tax, and rule for a mandamus to them to hear and determine an appeal according to law, made absolute, the Att.-Gen. admitting that the surveyor of taxes, who had claimed, and been conceded, the right by the Commrs. to be present with them while they were considering their decision, had no such right under s. 57, sub-s. 7, of the Taxes Management Act, 1880. *REX v. Brixton Income Tax Commrs. and Another* Div. Ct. 29 T. L. R. 712; 6 T. C. 195

*Assessment, Notice of*

*Additional first assessment—Requirement of notice—Manager of company—Place of abode—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 80, 188—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), ss. 16, 52.*

*Held*, that the provision of s. 80 of the Income Tax Act, 1842, that Commrs. of Income Tax must give notice of assessments under Scheds. A. and B either by public notice or by delivering to each party charged a notice of the amount of assessment, is extended to an assessment under Sched. E by s. 188 of the Act, and applies to an additional first assessment made under s. 52 of the Taxes Management Act, 1880.

By s. 16 of the Taxes Management Act, 1880, notices may be served either by delivery to the person to be served or by leaving the same at his usual or last known place of abode. The plt. was the manager of a limited co. which had its office in the City of London. The plt. resided at Wealdstone, in the county of Middlesex, and very rarely attended at the office of the co. None of the income tax notices sent to the office of the co. ever reached him:—

*Held*, in an action by the plt. for wrongful distress for non-payment of income tax under Sched. E, that in the case of a manager of a co. there is no rule by which he must be taken to have a statutory abode at the office of the co. and that in the circumstances the office of the co. was not the plt.'s usual or last known place of abode within the meaning of s. 16 of the Taxes Management Act, 1880. *BERRY v. FARROW AND SEARCY* - - - - -

**30 T. L. R. 129**

**REVENUE (Income Tax)—continued.***Company.*

*See below, Office and Residence.*

*Deductions.*

*Brewery business—Balance of profits and gains—Tied houses—Repairs—Insurance premiums—Loss on rents—Legal expenses—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2.*

*Case stated by Income Tax Commrs.*

Upon an appeal to the Commrs. for the General Purposes of the Income Tax Acts by the appellants against the assessment upon them under Sched. D, in respect of the profits of their brewery business, they claimed to be allowed deductions in respect of (1.) repairs to tied houses; (2.) difference between rents of leasehold houses, or Sched. A assessment of freehold houses, and the rents received from tied tenants; (3.) fire and licence insurance premiums; (4.) rates and taxes; and (5.) legal costs.

The tenants of the appellants' tied houses were bound by their agreements of tenancy to repair the interior of the demised premises, but did not in fact do any repairs. The appellants did all the repairs as a matter of commercial expediency and necessarily in order to avoid the loss of tenants. In consideration of the "tie" contained in the tenancy agreements, the appellants let their tied houses at less than their real annual value in order to get the trade and increase the profits of their business as brewers. They paid premiums on insurances against fire and against loss of licences in cases where compensation is not payable; and this payment was a usual and proper trade outgoing. They paid the rates and taxes for which the tied tenants were liable for the same reason as they did the repairs. They also incurred solicitors' costs in connection with their tied houses in respect of the renewal of licences, tenancy agreements, complaints against tenants, and assessments to rates. They acquired and held the tied houses solely and necessarily for the purpose of their business and for making profits therein.

The Commrs. decided that the appellants were not entitled to any of the deductions claimed.

*Horridge J. held*, following *Brickwood & Co., Ltd. v. Reynolds* [1898] 1 Q. B. 95, that the deduction in respect of the repairs could not be allowed; but that all the other deductions, being expenses essential to the earning of the profits, ought to be allowed. Appeal allowed in part. *USHER'S WILTSHIRE BREWERY, LD. v. BRUCE* - [1913] **W. N. 376**

*Fire insurance company—Profits or gains—Premium receipts—Deductions for unexpired risks.*

*SUN INSURANCE OFFICE v. CLARK*

**H. L. (E.) [1912] A. C. 443; 81 L. J. (K. B.) 488; 106 L. T. 438; [1912] W. N. 79; 6 T. C. 59; 29 T. L. R. 303; 56 S. J. 375**

*Letting furnished house—Expense incurred in earning profits—Expense of renting house elsewhere—Property and Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

**REVENUE (Income Tax)—continued.**

A lady made a profit by letting her furnished house for two months, and, when assessed for income tax thereon, claimed to deduct the rent of another house which she had taken to reside in during that period:—

*Held*, that this rent was not an expense necessarily incurred in earning the profit, and accordingly that the deduction should be disallowed. **WYLIE v. ECCOTT**

Ct. Sess. 1913 S. C. 16; 6 T. C. 128

**Mines—Coal Mine.**

A co., member of a Coalowners' Association, claims allowance of certain contributions representing levies made by the association and expended (1.) in defraying expenses of the Conciliation Board (Scotland), (2.) in paying subscriptions to the Mining Association of Great Britain, and (3.) in experimenting with coal dust:—

*Held*, that, so far as applied in defraying the expenses of the conciliation board, the levies were an admissible deduction in arriving at the liability of the co.; but that, so far as applied to the other two purposes, they were not admissible. **LOCHGELLY IRON AND COAL CO., LD. v. CRAWFORD**

Ct. Sess. (Sc.) 6 T. C. 267

**Mines—Tin mine—Expenses of deepening shaft—Right to deduct in ascertaining profits—Working expenditure or capital expenditure—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, No. 3, r. 2.**

A co. who owned and carried on a large tin mine had sunk a vertical shaft which was used as a ventilating shaft, and as a centre from which levels and roads might be cut for the purpose of discovering lodes or pockets of ore, and for raising men and materials, but not for the purpose of winning ore from a more or less vertical lode. The expenses of sinking this shaft had not been allowed as a deduction in ascertaining the profits in previous years.

As the ore in this section of the mine had become practically exhausted, the co. decided that the section could no longer be worked, unless they could win ore from the lower levels, and accordingly they sank the shaft further down, and such extension, together with the old portion, was used in the same way as the old portion.

Comrs. of Income Tax, being of opinion that the cost of deepening the shaft was a proper working cost, allowed the deduction of such cost by the co. in arriving at the annual profits of the mine.

*Held*, that the expenditure incurred in deepening the shaft was a capital expenditure and not a working expenditure, and that the co. was not entitled to deduct the same. **BONNER v. BASSETT MINES, LD.**

Horridge J. 108 L. T. 764; 6 T. C. 146

**Premium on life insurance—Sum payable on death before, and larger sum if alive, on certain date—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 54.**

An insurance contract, whereby, in consideration of an annual premium, 100*l.* is pay-

**REVENUE (Income Tax)—continued.**

able on the death of the assured within fifteen years and 200*l.* if he is alive at the end of that period, is an "insurance on his life" within the meaning of s. 54 of the Income Tax Act, 1853, and the assured is entitled to deduct the whole amount of the premium from his assessment to income tax.

Decision of Hamilton J. [1912] 1 K. B. 635, affirmed.

Observations in **Joseph v. Law Integrity Insurance Co., Ltd.** [1912] 2 Ch. 581, approved. **GOULD v. CURTIS - C.A.** [1913] 3 K. B. 84; 82 L. J. (K.B.) 802; 108 L. T. 779; [1913] W. N. 123; 29 T. L. R. 469; 57 S. J. 461

**Sinking Fund—Profits.**

A co. is empowered by Act of Parliament to raise money upon mortgage for the purpose of carrying out a Government contract, but is required by the same Act to establish a sinking fund for the extinction of the mortgage debt. A sum is to be set aside for payment into the sinking fund out of each quarterly payment received under the contract or out of other moneys belonging to the co.

*Held*, following the decision in **Mersey Docks and Harbour Board v. Lucas** (1883) 2 T. C. 25, that the sums thus set aside are not allowable as a deduction in arriving at the co.'s assessable profits. **CITY OF LONDON STEAM PACKET CO. v. O'BRIEN**

Div. Ct. (Ir.) 6 T. C. 101

**Timber, Cutting and selling—Value of timber cut—Right to make deduction—New Zealand Land and Income Assessment Act, 1908 (No. 95 of the Consolidated Statutes of New Zealand), ss. 71, 79, and 87.**

A co. carried on in New Zealand the business of cutting, milling, and selling timber, and for the purpose of that business it had acquired, upon its incorporation and from time to time subsequently, rights over freehold and leasehold bush lands bearing natural timber, in some cases by purchasing the lands and in other cases by purchasing the timber thereon with the right to remove the timber within a stated period:—

*Held* that, under the Land and Income Assessment Act, 1908, which regulates the assessment of income tax in New Zealand, the co. was not entitled in its assessment for income tax to make any deduction from the gross proceeds of its business in respect of the value of the standing timber which it had cut. **KAURI TIMBER CO., LD. v. NEW ZEALAND COMMR. OF TAXES** - P. C. [1913] A. C. 771; 109 L. T. 22; 29 T. L. R. 671

**Wear and tear—Succession to business.**

A limited co. (the new co.) incorporated in 1910 with the object of taking over the business of another limited co. (the old co.), purchased the old co.'s business as a going concern. The new co. was assessed under the fourth rule of cases 1 and 2 of Sched. D of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), as the person succeeding to the business of the old co., but objected to the assessment on the ground that the profits assessed were less than the unexhausted balance of the amount allowable by way of deduction for

**REVENUE (Income Tax)—continued.**

wear and tear to the old co. (sub-s. 3 of s. 26 of the Finance Act, 1907 (8 Edw. 7, c. 13)).

The Crown, relying on s. 12 of the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), and sub-s. 4 of s. 26 of the Finance Act, 1907, contended that the allowance of such balance must be regarded as personal to the old co., and this view was supported by the Comms. on appeal.

*Held*, that the determination of the Comms. was wrong. **SCOTTISH SHIRE LINE, L.D. v. LETHEM** - Ct. Sess. (Sc.) 6 T. C. 91

*Distress.*

See DISTRESS.

*Dividends.*

*Deduction from dividends before tax imposed by statute—Bill of Rights* (1 W. & M. sess. 2, c. 2)—*Customs and Inland Revenue Act*, 1890 (53 & 54 Vict. c. 8), s. 30—*Income Tax Assessment Act*, 1870 (33 & 34 Vict. c. 4), s. 1—*National Debt Act*, 1870 (33 & 34 Vict. c. 71), ss. 14, 15—*Revenue Act*, 1911 (1 Geo. 5, c. 2), s. 11.

A resolution of the Committee of the House of Commons for Ways and Means, assenting to income tax at a certain rate for the ensuing financial year (commencing April 6), does not, either per se, or after adoption by the House of Commons, authorize the Crown to levy on the subject the tax so assented to, before the tax has been actually imposed by Act of Parliament; nor can the Bank of England, before the tax is so imposed by statute, lawfully deduct any income tax from the dividends payable by the Bank to a stockholder without the assent of the holder.

The effect of s. 30 of the Customs and Inland Revenue Act, 1890, and other statutory provisions—enacted to meet the inconvenience caused by income tax being a temporary tax, when it was intended but not yet enacted that the tax should be imposed for the ensuing financial year—stated and explained. **BOWLES v. BANK OF ENGLAND** - Parker J. [1913]

1 Ch. 57; 82 L. J. (Ch.) 124; 108 L. T. 95; [1912] W. N. 252; 29 T. L. R. 42; 6 T. C. 136

*Note.*

See now Provisional Collection of Taxes Act, 1913 (3 Geo. 5, c. 3).

*Exemption.*

*Forbidden by statute—Subsequent Act authorizing annuity free from all taxes—Super-tax—Income Tax Act*, 1842 (5 & 6 Vict. c. 35), s. 187—34 Vict. c. 1, s. 1—*Finance* (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 66.

By s. 187 of the Income Tax Act, 1842, any future Act conferring an exemption from taxes shall not exempt any person from the duties granted by the Act of 1842.

By s. 1 of an Act of 1871 (34 Vict. c. 1) the Crown was empowered to grant "to Princess Louise an annuity of 6,000*l.* free from all taxes, assessment, and charges."

By s. 66 of the Finance (1909-10) Act, 1910, a super-tax was imposed on incomes over 5,000*l.*—

**REVENUE (Income Tax)—continued.**

*Held*, that the Acts of 1842 and 1871 being inconsistent, the later Act must prevail, and that therefore the annuity was exempt from income tax. **DUKE OF ARGYLL v. INLAND REVENUE COMMS.** - Scrutton J. 30 T. L. R. 48

*Foreign Property.*

*Foreign investments—Interest not remitted home—Insurance company—Income Tax Act*, 1842 (5 & 6 Vict. c. 35), s. 100, *Sched. D*, first, fourth, and fifth cases—*Income Tax Act*, 1853 (16 & 17 Vict. c. 34), s. 2, *Sched. D*.

A fire and life insurance co., which, in addition to its business done at home, carried on a fire insurance business abroad, was registered in this country under the Companies Acts and had its head office here. One of the objects stated in its memorandum of association was to invest money not immediately required in such manner as might from time to time be determined. By the laws of certain of the foreign States in which it carried on business an insurance co. was required, as a condition precedent to carrying on business there, to deposit with the Governments of those countries certain sums of money and to invest those sums in accordance with the local laws. In pursuance of those requirements the co. invested certain sums in those States. It also voluntarily invested there other sums representing accumulated profits of the business. Both classes of investments yielded interest which was received by the co. abroad but was not remitted to the United Kingdom. This interest was included in the balance-sheets of the co. :—

*Held*, that the income of the foreign investments formed part of the profits or gains of the co.'s business and was properly taxed under case 1 of Sched. D of s. 100 of the Income Tax Act, 1842.

Decision of the C. A. [1912] 2 K. B. 41, affirmed. **LIVERPOOL AND LONDON AND GLOBE INSURANCE CO. v. BENNETT** - H. L. (E.) [1913]

A. C. 610; 82 L. J. (K. B.) 1221; 109 L. T. 483; [1913] W. N. 267; 29 T. L. R. 757; 57 S. J. 739

*Place of assessment—Jurisdiction to assess at place of residence—Income Tax Act*, 1842 (5 & 6 Vict. c. 35), s. 108—*Additional first assessment—Additional Commissioners to "make" assessment within three years after year of assessment—"If the surveyor discovers" first assessment inaccurate—Necessity for legal evidence—Taxes Management Act*, 1880 (43 & 44 Vict. c. 19), s. 52—*Finance Act*, 1907 (7 Edw. 7, c. 13), s. 23, sub-s. 2.

The jurisdiction to assess a person to income tax under Sched. D in respect of profits and gains from foreign possessions is not by s. 108 of the Income Tax Act, 1842, conferred exclusively upon the Comms. acting respectively for London, Bristol, Liverpool, and Glasgow. That section merely gives an option to the taxpayer to be assessed at one of those places by delivering a statement of his profits and gains from foreign possessions to the Comms. for that place, and upon that being done the Comms. come under an obligation to assess him. Therefore where a person chargeable to income tax has not delivered a statement of his profits and gains from foreign

**REVENUE (Income Tax)—continued.**

possessions to the Commrs. acting for one of the above-mentioned places, the Commrs. acting for the place where he resides have jurisdiction to assess him in respect thereof.

By s. 52 of the Taxes Management Act, 1880, as amended by s. 23, sub-s. 2, of the Finance Act, 1907, "if the surveyor discovers" that any properties or profits chargeable to income tax have been omitted from a first assessment, or that any person so chargeable has not made a full and proper or any return, then as regards the duties chargeable under Sched. D the additional Commrs. shall at any time within the year of assessment or within three years after the expiration thereof make an assessment on such person in an additional first assessment in such sum as according to their judgment ought to be charged on such person, subject to objection by the surveyor and to appeal:—

*Held*, (1.) that it is not a condition precedent to the jurisdiction of the additional Commrs. to make an additional first assessment that the surveyor should have legal evidence of the insufficiency or inaccuracy of the first assessment, but that it is sufficient, if he satisfies himself that the first assessment is insufficient or inaccurate.

(2.) That an assessment is "made" when it is signed by the additional Commrs. and not when it is confirmed by the general Commrs., and that therefore an additional first assessment signed by the additional Commrs. within three years after the expiration of the year of assessment is "made" in time, though it is not confirmed by the general Commrs. until after the expiration of that period. *REX v. KENSINGTON INCOME TAX COMMRs.*

**Div. Ct. [1913] 3 K. B. 870 : 6 T. C. 279**

*Property settled on infants—Infants not entitled to a vested interest—Provision for maintenance and education—"Uncontrolled discretion" of trustees—Sums remitted to guardian in United Kingdom for maintenance and education—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, case 5—Income Tax Act, 1863 (16 & 17 Vict. c. 44), s. 2, Sched. D.*

A foreigner resident abroad by his will gave his property, which was situate abroad, to trustees upon trust for his deceased son's children, who were minors, there being a provision that the trustees should accumulate the income of the respective shares of the children and add the accumulations to capital until the children should respectively attain the age of twenty-five years, and no child should have any vested interest during the continuance of the trust. The will contained a direction to the trustees, out of the net income of the proportionate share of the trust estate held in trust for any such child, to make provision from time to time as they in their uncontrolled discretion might think necessary or advisable for the suitable maintenance and education of such child. The trustees from time to time remitted to the mother of the children, who was their guardian and who was residing with them in England, sums of money in accordance with the provisions of the will for the maintenance and education of the children:—

**REVENUE (Income Tax)—continued.**

*Held*, that the moneys so remitted were assessable to income tax under s. 100, case 5, of the Income Tax Act, 1842, Sched. D, as being moneys received in this country in respect of foreign possessions or as being moneys which were in themselves foreign possessions. *DRUMMOND v. COLLINS* - **Horridge J. [1913] 3 K. B. 583 ; 109 L. T. 631 ; [1913] W. N. 276**

**Office.**

*Estate agent—Negotiation fee paid to agent on sale under Land Purchase Acts—Income Tax Act, 1853 (16 & 17 Vict. c. 34), Sched. D—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 23, sub-s. 12.*

The agent of an estate intended to be sold to the tenants under the provisions of the Irish Land Act, 1903, was employed by the vendors to negotiate the sales, under an agreement by which he was to receive out of the purchase-money a commission of 3 per cent. on the amount of the same, and this agreement was sanctioned by the Estates Commrs. under s. 23, sub-s. 12, of the Act. The estate was sold and amount of the commission paid to the agent out of the purchase-money:—

*Held*, that the commission was part of the annual gains and profits of the agent arising from his vocation as such agent, in respect of which he was assessable to income tax. *HUMPHREY v. PEARE*

**[1913] 2 I. R. 462 ; 6 T. C. 201**

*Office or employment of profit—Employment exercised wholly out of United Kingdom—Servant of limited company—Head office of "department"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 146, Sched. E, r. 3 ; s. 147.*

By r. 3 of s. 146, Sched. E, of the Income Tax Act, 1842, the duties shall be paid "on all public offices and employments of profit within" the United Kingdom; "(videlicet) . . . any office or employment of profit held . . . under any company or society, whether corporate or not corporate." By s. 147, "every person to be assessed for his office or employment shall be deemed to have exercised the same at the head office of the department under which such office or employment shall be held . . . although the duties of such office or employment shall be performed . . . within or out of" the United Kingdom.

The appellant entered into a contract in England with a limited co., whose head office was in England and who carried on a trading business in West Africa, to serve the co. as their agent in West Africa; his employment and salary commenced from the date of his leaving England for West Africa and continued until the date of his giving up charge of the agency in West Africa. The appellant had a place of residence in England where his wife and children resided during his absence in West Africa, and where he himself resided when he was in England:—

*Held*, that r. 3 of s. 146 only applied to an office or employment of profit exercised within the United Kingdom and therefore did not apply to the appellant's employment which was exercised wholly out of the United Kingdom; that the employment of the appellant

**REVENUE (Income Tax)—continued.**

by the co. was not an employment under a "department" within the meaning of s. 147 so as to make him assessable at the head office of the co., and that therefore the appellant was not assessable to income tax in respect of his employment under the co. *PROKLES v. FOSTER* Horridge J. [1913] 1 K. B. 174;

82 L. J. (K. B.) 121; 20 Mans. 106; 108 L. T. 106; 6 T. C. 131; 29 T. L. R. 112

**Profits.**

*Golf club—Fees received from visitors—Profit or gain—Method of assessment—Income Tax Act, 1842 (5 & 6 Vict. c. 35), Sched. D, Cases 1 and 6.*

The appellants, an ordinary members' golf club, acquired land under a lease from a ry. co. and laid out a golf course and erected a club-house thereon. In addition to the members of the club, who were entitled on payment of an annual subscription to play on the links and to other privileges for the current year, a considerable number of visitors were permitted to use the club premises and to play on the links in accordance with a provision contained in the lease which required the club to allow such visitors to play on payment of certain green fees. The total annual expenditure incurred by the club in maintaining the links in a proper condition for play exceeded the total amount of fees received from visitors:—

*Held* by the C. A., affirming the decision of Hamilton J., that the appellants were carrying on an enterprise which was beyond the scope of the ordinary functions of the club, and as to which separate accounts might be kept so as to ascertain whether there were any profits, and that any profits derived from the visitors' green fees were therefore taxable under Sched. D of the Income Tax Act, 1842.

The Comms. for the General Purposes of the Income Tax had decided that the club was liable to assessment in respect of visitors' green fees, less such proportion of the annual outlay in maintaining and keeping up the links and club-house as the visitors' contributions bore to the entire annual income of the club or fund available for the maintenance and upkeep. Hamilton J. held that the method of arriving at the amount of the taxable profits adopted by the Comms. was wrong, and that in default of agreement the case must go back to them to ascertain the amount of taxable income received by the club:—

*Held*, that this decision was right.

Decision of Hamilton J. [1912] 2 K. B. 177, affirmed. *CARLISLE AND SILLOTH GOLF CLUB v. SMITH*

Q. A. [1913] 3 K. B. 75; 82 L. J. (K. B.) 337; 11 L. G. R. 710; 108 L. T. 785; 6 T. C. 196

*Local authority supplying water—Profit on water rents—Liability to income tax—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, No. 3—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 61, sub-ss. 1, 2, 3; ss. 232, 233.*

A local district council by virtue of the provisions of the Public Health (Ireland) Act, 1878, provided waterworks for the purpose of supply-

**REVENUE (Income Tax)—continued.**

ing water to the inhabitants of their district and thereby made a profit:—

*Held*, that such profit was a profit within the meaning of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), and therefore liable to income tax. *THE MULLINGAR R. D. C. v. ROWLES* Div. Ct. (Ir.) [1913] 2 I. R. 44; 6 T. C. 85

*Supply of water by rural authority to parishes in their area—Profits in some parishes—Losses in other parishes—Assessment of profits—Annual value—Profits—Rural district council—Supply of water to contributory places—Separate undertakings—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 60, 101—Revenue Act, 1866 (29 Vict. c. 36), s. 8.*

*WAKEFIELD R. D. C. v. HALL* C. A. [1912] 3 K. B. 328; 81 L. J. (K. B.) 1201; 10 L. G. R. 1002; 107 L. T. 138; 76 J. P. 437; 6 T. C. 181

See above, *Deductions.*

**Residence.**

*Company registered abroad—Residence in United Kingdom—Evidence—Finding of fact by Commissioners—Jurisdiction of Court—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

Where Comms. for the General Purposes of the Income Tax Acts have found as a fact that a co. registered abroad is resident within the United Kingdom, and liable to be assessed to income tax under s. 2, Sched. D, of the Income Tax Act, 1853, such finding is final, and the Court, on a case stated, will only consider whether there was evidence to justify such finding.

Where the business of a co. registered abroad was controlled by a board of directors who met in England, and all the ordinary stock of the co. was held in England:—

*Held*, that there was evidence that the co. was resident in the United Kingdom, although the co. did not do any trade in the United Kingdom, and had not any banking account here.

Judgment of the Court below (106 L. T. 171) affirmed. *AMERICAN THREAD CO. v. JOYCE* - H. L. (E.) 108 L. T. 353; 6 T. C. 163; 29 T. L. R. 266; 57 S. J. 321

*Company registered and resident in England—Business carried on abroad—Local board—Controlling power in company in England—Liability to income tax on profits abroad—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100, Sched. D, Cases 1, 5.*

A co., whose registered office was in England, was registered in England for the purpose of acquiring certain hotels in Egypt, and there carrying on the business of hotel proprietors. By a special resolution of the co. the Egyptian business was to be carried on and managed by a local board in Egypt, which was to be wholly independent of any other directors, and general meetings of the co., and only general meetings held in Egypt were to appoint the local board or to pass resolutions binding on them, but the remuneration of members of the local board was to be determined by the directors. The



**REVENUE (Income Tax)—continued.**

Egyptian business was to be under the control of the local board, but the profits of such business were to be ascertained as and when the directors considered expedient, and until otherwise directed by the directors the local board were to retain such profits in Egypt and remit to England only such sums as were necessary to pay dividends payable in the United Kingdom and to meet expenses incurred by the London board in London. The management of all the business other than the Egyptian business remained with the directors in London. The Egyptian accounts were made up in Egypt, but the balance-sheets and profit and loss accounts were made up in London.

The co. were assessed to income tax under case 1 of Sched. D of s. 100 of the Income Tax Act, 1842, in respect of the whole of their profits which during the year of assessment were derived wholly from their Egyptian hotel business; and the Commrs., having found that "the head and seat and controlling power of the company remained in England with the board of directors," confirmed the assessment:—

*Held*, that the finding that the head and seat and controlling power of the co. remained in England was a finding of fact; that there was proper evidence to support such finding; and that it amounted to a finding that part of the trading was carried on within the United Kingdom, and that therefore the co. were properly assessed under case 1 of Sched. D. **EGYPTIAN HOTELS, LD. v. MITCHELL**

**Horridge J. 108 L. T. 558; 6 T. C. 152; 29 T. L. R. 109**

*Exercise of trade within the United Kingdom—Agent, &c., having the receipt of profits—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Sched. D.*

Appellants carry on business as merchants and commission agents in the United Kingdom, and sell goods on behalf of a firm of manufacturers at Verviers, Belgium. There is no written agency agreement. Offers received by appellants are submitted to the manufacturers for approval, and, if approved, are accepted by appellants on behalf of the manufacturers. The goods are consigned to appellants for delivery to customers in the United Kingdom. The appellants receive payment for the goods and discharge the accounts on behalf of the manufacturers. The appellants send sale accounts to the manufacturers monthly and render a quarterly statement for expenses and commission. They are paid by commission on business done and are liable for one-half of the bad debts:—

*Held*, that the manufacturers were exercising a trade within the United Kingdom, and that the decision of the Commrs. in assessing the appellants, as agents, in respect of the profits derived by the manufacturers from the exercise of such trade was right. **MACPHERSON & CO. v. MOORE** - Ct. Sess. (Sc.) **6 T. C. 107**

**Residence abroad.**

A merchant carrying on business in Madras resided there, with his wife, during the whole

**REVENUE (Income Tax)—continued.**

of the year of assessment, not visiting the United Kingdom at all. His usual residence was in Madras, but, in nearly every year prior to the year of assessment, he had visited the United Kingdom, residing latterly with his wife and family in a house purchased in his wife's name out of moneys belonging to her and himself and owned by her. During the year of assessment some of his children resided in this house:—

*Held* (**Lloyd v. Sully**, 2 T. C. 37, contrasted), that during the year of assessment he was not chargeable with income tax as a person residing in the United Kingdom. **TURNBULL v. FOSTER**

**Ct. Exch. (Sc.) 6 T. C. 206**

**Retention of Tax.**

*Aggregate revenue from undertakings of corporation—Statutory dividend fund account—Loans charged on all undertakings and revenue—Dividends paid out of profits or gains "brought into charge"—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 102—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 139, 140, and Sched. V.—Leeds Corporation (General Powers) Act, 1901 (1 Edw. 7, c. cclv.), ss. 4, 33, 34, 36—49.*

A local Act, the Leeds Corporation (General Powers) Act, 1901, provided that loans raised and to be raised by the corporation for the purposes of their waterworks and other undertakings and properties should be charged indifferently upon all such undertakings and properties, and should rank equally and *pari passu* without priority or preference; such loans having previously been chargeable on the several undertakings and properties respectively. The Act also created a "dividends fund" into, and from which, the corporation were to pay the amounts of the dividends (including interest and other annual sums) payable in respect of the loans. But as part of the general account of the dividends fund, they were required to keep separate accounts in respect of the several undertakings and properties; and whenever the respective revenues thereof were insufficient to provide for the dividends payable in respect of any such undertakings or properties, the deficiencies were to be made up from the city fund and city rate (i.e., the borough fund and borough rate under the Municipal Corporations Act, 1882), the consolidated rate (i.e., a rate similar to the general district rate under the Public Health Act, 1875), or a highway rate as the corporation might consider equitable.

In the financial year in question the net revenue from some of these undertakings and properties was more than sufficient to pay the dividends, and in these cases a sufficient proportion of the revenue to pay the dividends was carried to the dividends fund, and the balances were carried to the credit of the funds or rates from which the deficiencies (if there had been any) would have been made up. The net revenue from other undertakings and properties was insufficient to pay the divi-



**REVENUE (Income Tax)—continued.**

dividends, and in these cases the whole of such revenue was carried to the dividends fund, and the deficiencies were made up from the proper funds or rates.

The Corporation, having deducted income tax from the dividends paid by them from the dividends fund, claimed as against the Crown to retain so much of such tax as had been deducted from dividends paid in respect of the latter class of undertakings and properties, so far as the sums required to pay those dividends had been made up from funds or rates to the credit of which the surplus profits of the former class of undertakings and properties had been carried, on the ground that those profits, being admittedly taxable, had already been "brought into charge" within the meaning of s. 102 of the Income Tax Act, 1842:—

*Held*, that the Leeds Corporation (General Powers) Act, 1901, distinguished between a fund to be created by a mandate of the Legislature and an account to be kept of that fund for its due administration; that it preserved instead of repealing the provisions of the earlier Acts by which it was assumed that certain dividends were properly payable out of the several revenues respectively instead of being permissibly payable in general out of all resources in the aggregate; that the proportions of the income received in respect of the particular undertakings remained distinguishable portions of interest, although the securities for the loans had been unified; and that, therefore, the dividends in question could not be treated as having been paid out of the profits which had already been brought into charge to the tax, and the corporation were not entitled to retain the tax deducted from such dividends.

Decision of C. A. (Cozens-Hardy M.R. and Farwell L.J., Kennedy L.J. dissentiente), 10 L. G. R. 81, reversed, and judgment of Hamilton J., 9 L. G. R. 461, restored. *SUGDEN v. LEEDS CORPORATION* H. L. (E.) 11 L. G. R. 682; 108 L. T. 578; 77 J. P. 225; 6 T. C. 211; 29 T. L. R. 402; 57 S. J. 425

**Super-tax.**

*Assessment—Assessment under Sched. D for previous year not conclusive for purposes of super-tax*—*Finance* (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 66, 72.

For the purpose of assessment to super-tax, under s. 66 of the *Finance* (1909-10) Act, 1910, the sum at which the taxpayer has been assessed to income tax under Sched. D for the year preceding the year of assessment to super-tax is not conclusive and binding on the Special Commrs., and the taxpayer may prove what was in fact his income for such preceding year.

*Wylie Hill v. Inland Revenue Commrs.*, 1912 S. C. 1246, followed. *BROOKS v. INLAND REVENUE COMMS.* - *Horridge J.* [1913] 3 K. B. 398; 82 L. J. (K.B.) 1086; 109 L. T. 363; [1913] W. N. 263; 29 T. L. R. 755

*Deductions—Farming losses—Losses not claimed as deductions from income tax—Deduc-*

**REVENUE (Income Tax)—continued.**

*tions not claimed within six months—Finance* (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 56, sub-s. 2—*Customs and Inland Revenue Act*, 1890 (53 & 54 Vict. c. 8), s. 23, sub-s. 1.

The *Finance* (1909-10) Act, 1910, enacts, s. 66, sub-s. 2:—"For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts."

The *Customs and Inland Revenue Act*, 1890, s. 23, provides that for loss sustained in the occupation of land for purposes of husbandry an adjustment of liability for income tax may be obtained upon giving notice within six months after the year of assessment:—

*Held*, that a taxpayer, in making a return of his income of the previous year for the purposes of the super-tax, was entitled to claim as deductions losses sustained in husbandry, although these losses had not been claimed as deductions from his income tax, and although his claim was not made within six months after the year of assessment. *HILL v. INLAND REVENUE COMMS.* - Ct. Sess. 1912 S. C. 1246

*Partner—Share of profits of partnership business—Method of assessing partner to super-tax—Finance Act*, 1907 (7 Edw. 7, c. 13), s. 20—*Finance* (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 66.

For the purposes of super-tax, under s. 66 of the *Finance* (1909-10) Act, 1910, the income of a partner from the profits of the partnership is to be taken to be the share of those profits to which he was entitled, under the partnership agreement, for the year preceding the year of assessment to super-tax, such profits of the partnership being ascertained on an average of the three preceding years. *GAUNT v. INLAND REVENUE COMMS.* - *Horridge J.*

[1913] 3 K. B. 395; 82 L. J. (K.B.) 1131; 109 L. T. 555; [1913] W. N. 275

*See below, Mineral Rights Duty—Rental Value.*

*Waterworks.*

*See above, Profits.*

**Increment Value Duty.**

*Land values—Valuation—"Assessable site value"—Minus value—Finance* (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 25, sub-s. 4.

In making the valuation required by the *Finance* (1909-10) Act, 1910, to be made for the purposes of the land taxes imposed by that Act, "the assessable site value of land," ascertained in the manner provided by s. 25, sub-s. 4 of the Act, may be shewn as a minus quantity.

Decision of the Lords of the Ct. of Sess. in Scotland named for the purpose of hearing appeals under the Valuation of Lands (Scot-

**REVENUE (Increment Value Duty)—continued.**  
land) Act (1912, S. O. 948) reversed. INLAND  
REVENUE COMMS. v. HERBERT

H. L. (Sc.) [1913] A. C. 326; 82 L. J. (P. C.)  
119; 11 L. G. R. 865; 108 L. T. 850;  
[1913] W. N. 145; 29 T. L. R. 502;  
57 S. J. 516

*Sale of fee simple—Gross value—Sale in  
“open market” by willing seller—Special  
adaptability to needs of particular purchaser—  
Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8),  
s. 25.*

Appeals by the Inland Revenue Comms. from  
decisions of a referee under the Finance (1909-  
10) Act, 1910.

The appeals to the referee by Clay and others  
and Buchanan and others were heard together,  
both having reference to the same dwelling-  
house and garden, the fee simple of which house  
was bought by Clay and others on Sept. 29, 1910,  
from Mrs. Buchanan for 1000*l*.

On Jan. 21, 1911, a provisional valuation of  
the house was made which shewed the following  
items:—Original gross value, 750*l*.; original  
total value, 750*l*.; difference between the gross  
value and the value of the fee simple divested of  
buildings, trees, &c., 560*l*.; original full site  
value 190*l*.; and original assessable site value,  
190*l*.

The conveyance of the house by Mrs.  
Buchanan to Clay and others being an  
“occasion” under and by virtue of s. 2, sub-s. 2,  
of the Finance (1909-10) Act, 1910, particulars  
as provisionally determined of the values on the  
occasion were, on Feb. 21, 1911, duly made  
and served by the Comms.’ valuer. Those  
particulars shewed as follows:—Value of land  
on the occasion, 1000*l*.; difference between gross  
value and value of the fee simple divested of  
buildings, trees, &c., 560*l*.; site value on the  
“occasion,” 440*l*.

Notices of appeal were duly given against the  
total site value fixed in the provisional valuation,  
and against the provisional determination of the  
site value on the “occasion.”

At the hearing of the appeals by the referee  
evidence was called on both sides. The evidence  
called by the Comms. shewed that the gross  
value of the land on the occasion did not exceed  
750*l*.; the evidence called by the other side did  
not dispute that, apart from one special circum-  
stance, the gross value was fairly fixed at 750*l*.  
The special circumstance was that the purchase  
by Clay and others from Mrs. Buchanan was a  
purchase on behalf of the proprietors of a nurses’  
home, who occupied the house next door to the  
house in question, and they being desirous of  
extending their premises, were prepared to give,  
and did give, 1000*l*. for the house now in ques-  
tion. It was contended that that circumstance  
constituted a special adaptability of the house  
in question, enhancing its value and rendering  
1000*l*. a proper value to be fixed.

The referee in Clay’s case fixed the gross  
value at 1000*l*.; the difference between gross  
value and value of fee simple of land divested of  
buildings, trees, &c., at 300*l*.; and the full site  
value and assessable site value at 200*l*.

In the other appeal (Buchanan’s case) the

**REVENUE (Increment Value Duty)—continued.**  
referee fixed the value of land on the occasion at  
1000*l*. and the site value on the occasion at 200*l*.

The Comms. appealed in both cases, con-  
tending that the evidence shewed that the fee  
simple, sold in the open market by a willing  
seller, would not have fetched more than 750*l*.,  
and that the price that one particular purchaser  
might, owing to special circumstances, be pre-  
pared to give was not the measure of the market  
value of the house.

At the hearing of the appeals oral evidence  
was given as to the value of the house in question,  
the evidence being to the same effect as that  
given before the referee.

Scrutton J. dismissed both appeals, being of  
opinion that the principal buyer could not be  
excluded from the “open market,” though, for a  
genuine business reason, that person was willing  
to pay a higher price than others. His Lordship  
also stated that the fact that he had heard oral  
evidence in these appeals must not be taken as  
binding him or other revenue judges to follow  
such a course in future. Appeals dismissed.  
INLAND REVENUE COMMS. v. CLAY AND  
OTHERS. INLAND REVENUE COMMS. v.  
BUCHANAN AND OTHERS

Scrutton J. [1913] W. N. 377

*Sale of fee simple—Mode of calculation—  
Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8)  
ss. 1, 2, 25.*

In order to ascertain the site value of land  
for the purposes of increment value duty on the  
occasion of a sale the value of the consideration  
for the transfer must in accordance with s. 2,  
sub-s. 2, of the Finance (1909-10) Act, 1910, be  
taken as the basis of the calculation, and from  
that must be made the like deductions as are  
directed by s. 25, sub-s. 4, of the same Act.

So held by the C. A. (Cozens-Hardy M.R.  
and Kennedy L.J., Swinfen Eady L.J. dissenting)

In 1910 the appellant sold the fee simple of a  
house, subject to tithe of the capital value  
of 33*l*., for 750*l*. At the time of the sale the  
“gross value” that is, the amount which the  
fee simple of the property if sold in the open  
market by a willing seller in its then condition  
free from any charge or burden might have been  
expected to realize, was 658*l*. On April 30, 1909,  
and at the date of the sale, the “full site value”  
was the same, namely, 228*l*. The original  
“assessable site value” was 105*l*. A deduction  
of 90*l*. was allowable for expenditure on the  
land.

An assessment of 25*l*. gross increment value  
duty under ss. 1 and 2 of the Finance (1909-10)  
Act, 1910, upon a sum of 125*l*. gross increment  
value, was made upon the appellant. On appeal  
the referee held that no increment value duty  
was payable, but this decision was reversed by  
Horridge J.

Held by the C. A. (Cozens-Hardy M.R. and  
Kennedy L.J., Swinfen Eady L.J. dissenting),  
that the proper method of calculating the  
increment value under the Act was to deduct  
430*l*., the difference between the 228*l*. full site  
value and the 658*l*. gross value, and also the  
allowance of 90*l*. from the purchase price  
of 750*l*., leaving 230*l*. or an excess of 125*l*. over

**REVENUE (Increment Value Duty)**—*continued.*  
the original site value of 105*l.*; and that, therefore, increment value duty was payable on the sum of 125*l.*

Decision of Horridge J. [1913] 1 K. B. 346, affirmed.

*Herbert's Trustees v. Inland Revenue* (1913) 50 S. L. R. 569, since reported sub nom. *Inland Revenue Commrs. v. Herbert* [1913] A. C. 326, discussed. *LUMSDEN v. INLAND REVENUE COMMRs.* C. A. [1913] 3 K. B. 809; 82 L. J. (K. B.) 1275; 109 L. T. 351; [1913] W. N. 268; 29 T. L. R. 759

*Site value—Substituted site value—Mortgage—Mode of calculation—Interest in land—Finance (1909-10) Act*, 1910 (10 *Edw.* 7, c. 8), ss. 2 25.

Appeal from a decision of Scrutton J.

The original site value of the applicant's freehold house had been ascertained under s. 25 of the Finance (1909-10) Act, 1910. The original gross value was 800*l.*, and the deductions to arrive at full site value were 610*l.*, leaving the original assessable site value 190*l.*

In Dec., 1898, the applicant had mortgaged the house for 800*l.*, and she now claimed, under s. 2, sub-s. 3, that the value of the house at that date was 1200*l.*, on the footing that the mortgagees were trustees and that it must be assumed that not more than two-thirds of the value were advanced on the security of the house. She contended that 1200*l.* ought to be substituted for 800*l.* as the original gross value of the house, and that the assessable site value was 273*l.* The Commrs. refused her application and the referee affirmed their decision. Scrutton J. reversed the finding of the referee and held that the applicant was entitled to have 273*l.* substituted for 190*l.*

The Commrs. appealed.

The C.A. held that the amount secured by the mortgage was not to be treated as a means of inferring what was the gross value of the mortgaged land, but must itself be taken to be that value. Their Lordships accordingly allowed the appeal. *HAYLLAR v INLAND REVENUE COMMRs.* C. A. [1913] W. N. 370

#### Inhabited House Duty.

See above, House Duty.

#### Land Tax.

—Redemption—Land abutting on highway—Exoneration ad medium flum—Underground railway—Land Tax Act, 1797 (38 *Geo.* 3, c. 5), ss. 4, 17, 18, 80—Land Tax Redemption Act, 1802 (42 *Geo.* 3, c. 116), ss. 8, 38.  
See LAND TAX.

#### Land Values.

See above, Increment Value Duty.

#### Legacy Duty.

*Successive interests—Bequest for lives—Remainder to contingent class—Same rate of duty—Possible intestacy—Next of kin liable to smaller rate—Mode of payment—Legacy Duty Act, 1796* (36 *Geo.* 3, c. 52), ss. 6, 12, 15, 17.

In re DUPPA. FOWLER v. DUPPA

*Swinfen Eady J.* [1912] 2 Ch. 445; 107 L. T. 522; [1912] W. N. 192

#### REVENUE—continued.

#### Licence Duty.

See below, Licensed Premises.

#### Licensed Premises.

##### Annual Licence Value.

*Basis of calculation—Finance (1909-10) Act*, 1910 (10 *Edw.* 7, c. 8), s. 44, sub-s. 2.

By s. 44, sub-s. 2, of the Finance (1909-10) Act, 1910, for the purposes of the sub-section the annual licence value of licensed premises shall be taken to be the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear, if they were not licensed premises, and "in estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from the sale of intoxicating liquor shall be taken into consideration":—

*Held*, (1.) that the ejusdem generis rule of construction did not apply to the words "hotels or other premises used for purposes other than the sale of intoxicating liquor," and, consequently, that a public-house which derived part of its profits from the sale of non-intoxicants fell within this provision; (2.) that the words "increased value" meant only the extra value arising from the profits of the trade in non-intoxicants due to the fact that the trade was carried on on licensed premises, and not the total value arising from the profits of that trade.

Decision of the C. A. [1912] 3 K. B. 377, affirmed on the first point and reversed on the second point. *INLAND REVENUE COMMRs. v. TRUMAN, HANBURY, BUXTON & Co. LD.*

H. L. (E.) [1913] A. C. 650; 82 L. J. (K. B.) 1042; 109 L. T. 337; [1913] W. N. 219; 77 J. P. 397; 29 T. L. R. 661

#### Licence Duty.

*Increase of Duty—Lease—Sub-lease—Liability of Lessor to pay proportion of increase—Held under a lease—Licence-holder—Finance (1909-10) Act*, 1910 (10 *Edw.* 7, c. 8), ss. 43, 46—*Finance Act*, 1912 (2 & 3 *Geo.* 5, c. 8), s. 2.

Sect. 2 of the Finance Act, 1912, provides that "where the licensed premises are held under a lease" which does not contain any covenant by the lessee to obtain intoxicating liquor from the lessor, the lessee shall be entitled to recover from the lessor a proportion of any increase of the duty payable in respect of the licence under the Finance (1909-10) Act, 1910:—

*Held*, that this provision does not apply to the case of a lessee of licensed premises who has sub-let the premises and who is not himself the holder of the licence. *WATNEY, COMBE, REID & Co., LD. v. BERNERS* Div. Ct.

[1913] 3 K. B. 427; 82 L. J. (K. B.) 1246; 109 L. T. 159; [1913] W. N. 225; 77 J. P. 461; 29 T. L. R. 648; 57 S. J. 697

#### Mineral Rights Duty.

Appeal, col. 541.

*Grant of Right to Let Down Surface*, col. 541.

**REVENUE (Mineral Rights Duty)—continued.***Rental Value*, col. 542.*Valuation*, col. 543.*Wayleaves*, col. 543.*Appeal.*

*Assessment — Decision of referee — Comms. of Inland Revenue—Right to appeal to High Court on "conditions directed by Rules of Court"—Rules as to appeals by subject only— "Any person aggrieved." — Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 33, sub-s. 4—Rules of the Supreme Court (Finance (1909-10) Act), 1911—Revenue Act, 1911 (1 Geo. 5, c. 2), s. 7.*

By s. 33, sub-s. 4, of the Finance (1909-10) Act, 1910, "any person aggrieved" by the decision of a referee under the Act may appeal to the High Court "within the time and in the manner and on the conditions directed by Rules of Court." Rules, dated Jan. 16, 1911, were made under the section, some of which appeared to be framed to meet the case of an appeal by the subject and did not apply to an appeal by the Comms. of Inland Revenue.

By s. 7 of the Revenue Act, 1911, which received the Royal Assent in March, 1911, it was declared that the Comms. of Inland Revenue had a right of appeal to the High Court as "persons aggrieved" under s. 33, sub-s. 4, of the Finance (1909-10) Act, 1910:—

*Held*, that the Comms.' right of appeal was absolute, and not affected by the omission from the rules of complete, exhaustive, or appropriate provisions as to the procedure upon an appeal by the Comms.

Decision of Horridge J. reversed. **INLAND REVENUE COMMS. v. JOICEY (No. 1) — C. A. [1913] 1 K. B. 445; 82 L. J. (K. B.) 162; 108 L. T. 135; [1912] W. N. 297; 29 T. L. R. 150**

*Note.*

See now Rules of the Supreme Court, December, 1912, Finance (1909-10) Act, 1910, W. N. 1912, p. 492.

*Grant of Right to Let Down Surface.*

*Copyholder — Lease of "right to work the minerals" — Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20, sub-s. 2.*

The respondent was the owner in fee of certain copyhold lands. In 1873 the lords of the manor granted a lease of the coal and other minerals under his land to a colliery co. By the custom of the manor the lords and their lessees were entitled to work the minerals without the consent of the copyholder so long as they did not let down or injure the surface. In 1897 the respondent "demised" to the colliery co. full power and liberty to work the coal under his land, without leaving any support for the surface, at a rent measured by the quantity of coal raised:—

*Held*, that the so-called demise was merely a release by the respondent of his right to support in consideration of a money payment, and was not a lease of a "right to work minerals" within the meaning of s. 20, sub-s. 2, of the Finance (1909-10) Act, 1910.

**REVENUE (Mineral Rights Duty)—continued.**

Decision of Horridge J. [1913] 1 K. B. 458, affirmed. **INLAND REVENUE COMMS. v. JOICEY (No. 2) — C. A. [1913] 2 K. B. 580; 82 L. J. (K. B.) 784; 108 L. T. 738; [1913] W. N. 159; 29 T. L. R. 537; 57 S. J. 557**

*Rental Value.*

*Rent paid by working lessee in last working year—Arrears of rent—Landlord's property tax—Super-tax—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 20, 66.*

By s. 20 of the Finance (1909-10) Act, 1910, mineral rights duty is charged on the rental value of all rights to work minerals. Where the right to work the minerals is the subject of a mining lease, the rental value is the amount of rent paid by the working lessee in the last working year in respect of that right.

The Marquess of Anglesey was the grantor of a mining lease at a yearly rent of 150*l.* In the year ending Sept. 30, 1911 (which was the last working year for the purposes of the case), he received from the lessees a sum of 141*l.* 5*s.*, being 150*l.* for rent up to April 5, 1911, less 8*l.* 15*s.* deducted by the lessees in respect of income tax:—

*Held*, that the amount of rent paid by the working lessees was the sum of 141*l.* 5*s.*, and not the sum of 150*l.*, and consequently that the former and not the latter sum constituted the rental value upon which mineral rights duty was chargeable.

The Duke of Beaufort was the grantor of a mining lease at a yearly rent of 500*l.* In the year ending Sept. 30, 1909 (which was the last working year for the purposes of the case), he received from the lessees 356*l.* 5*s.* in respect of three quarters' rent in arrear for the year 1907. The Act came into force on April 29, 1910:—

*Held*, that mineral rights duty was payable on the 356*l.* 5*s.* arrears of rent.

By s. 66 of the Act there is charged for the year therein specified in respect of the income of any individual the total of which from all sources exceeds 5000*l.* an additional duty of income tax referred to in the Act as super-tax. For the purposes of super-tax the total income of any individual from all sources is the total income of that individual from all sources for the previous year estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts.

It being assumed that the Duke of Beaufort was liable to pay super-tax:—

*Held*, that in order to arrive at the rental value of the mineral rights aforesaid the amount of super-tax was not to be deducted from the above sum of 356*l.* 5*s.*

Decisions of Hamilton J. [1912] 2 K. B. 281, affirmed. **DUKE OF BEAUFORT v. INLAND REVENUE COMMS. INLAND REVENUE COMMS. v. MARQUESS OF ANGLESEY**

**C. A. [1913] 3 K. B. 48; 82 L. J. (K. B.) 865; 108 L. T. 902; [1913] W. N. 158**

REVENUE (Mineral Rights Duty)—*continued.**Valuation.*

*Form 5—Legality—Finance* (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), s. 20.

On a claim by the plt. for a declaration that Form 5 issued by the Commrs. of Inland Revenue under s. 20 of the Finance (1909-10) Act, 1910, was illegal, unauthorized, and ultra vires, and that he was under no obligation to comply with the requisitions contained therein, the Commrs., being of opinion that Form 5 could not be supported, consented to an order being made following the form made in *Dyson v. Att.-Gen.* [1912] 1 Ch. 159. **LORD MOWBRAY v. ATT.-GEN.** **Phillimore J. 29 T. L. R. 115**

*Wayleaves.*

*Assessment—Finance* (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), ss. 20, 24.

By s. 20 of the Finance (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), it is provided that there shall be charged, levied, and paid an annual duty, called mineral rights duty, on the rental value of all rights to work minerals, and of all mineral wayleaves, at the rate in each case of 1s. in the pound of that rental value. By sub-s. 2 (c) of the same section it is also provided that the rental value shall be taken to be "In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave." In the defining section of the Act as to minerals, namely, s. 24, the expression "mineral wayleave" is stated to mean "any wayleave, airleave, waterleave, or right to use a shaft granted to or enjoyed by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals."

S. leased certain land to the C. Coal Co. for mining purposes, and the rent payable by the co. under the lease included (inter alia) certain percentages calculated upon the amount of coal brought upon and carried over the grantor's land from mines which were not on the grantor's land, but which coal was the produce of "foreign" mines. Included in the total rent paid to S. in the year of assessment, namely, 4966l., were two sums of 436l. 7s. 11d. and 351l. 9s. 4d., received in respect of coal belonging to other owners, but brought to bank on S.'s property and carried over the said property. S. was assessed in respect of these two sums as for mineral wayleaves, and appealed to one of the referees under the Finance (1909-10) Act, 1910, contending that the mineral rights duty did not relate to the minerals not the property of the appellant carried under the mineral wayleaves. The referee decided that the sums were rightly included in the assessment, and stated a special case in regard to them.

*Held* (dismissing the appeal), that the decision of the referee was correct. **SHAWE STOREY v. INLAND REVENUE COMMRs.** **Scrutton J.** **109 L. T. 559; [1914] 1 K. B. 87; [1913] W. N. 309; 30 T. L. R. 39; 58 S. J. 121**

REVENUE—*continued.**Reversion Duty.*

*Benefit accruing to the lessor—Basis of ascertainment of—Building agreement—Expenditure on building—payments made in consideration of the lease—Whether ground rent a "nominal rent"—Finance* (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), s. 13.

Where under a building agreement a builder agrees with the owner of land to erect houses thereon and to expend in so doing not less than a certain specified sum in consideration of a lease thereof being granted to him on completion of the houses, the sum so expended on their erection is not a "payment made in consideration of the lease" within the meaning of s. 13, sub-s. 2, of the Finance (1909-10) Act, 1910, and cannot be taken into consideration for the purpose of ascertaining the total value of the land at the time of the original grant of the lease.

The fact that the rent reserved under a lease is only a ground rent and does not represent the full value of the land and the buildings on it does not constitute it a "nominal rent" within the meaning of that sub-section. That expression as there used means a sum paid by way only of an acknowledgment of the lessor's title without any relation to the value of the premises demised. **STEPNEY AND BOW EDUCATIONAL FOUNDATION GOVERNORS v. INLAND REVENUE COMMRs.** **Horridge J. [1913] 3 K. B. 570; 82 L. J. (K. B.) 1300; 109 L. T. 165; [1913] W. N. 224; 29 T. L. R. 631**

*Determination of lease—Total value of land—Licensed premises—Value of licence—Finance* (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), s. 13; s. 25, sub-ss. 1, 3.

In estimating the total value of land for the purpose of assessing the reversion duty payable under s. 13 of the Finance (1909-10) Act, 1910, on the determination of a lease, the fact that premises on the land are licensed for the sale of intoxicating liquor, and that the value of the land is thereby enhanced, is an element to be taken into consideration.

*Decision of Horridge J. [1913] 1 K. B. 184, affirmed (Buckley L.J. dissenting).* **INLAND REVENUE COMMRs. v. FITZWILLIAM (EARL)** **C. A. [1913] 2 K. B. 593; 82 L. J. (K. B.) 777; 108 L. T. 741; [1913] W. N. 157; 29 T. L. R. 538**

*"Purchase" of reversion—Marriage settlement—Consideration of marriage—Finance* (1909-10) Act, 1910 (10 *Edw.* 7, c. 8), s. 14, sub-s. 1.

In the year 1888 the freehold reversion expectant on the determination of a lease for ninety-four years from Michaelmas, 1816, was conveyed, subject to the lease, to the trustees of a marriage settlement, before and in consideration of the marriage, upon the trusts thereby declared.

Upon a claim for reversion duty under s. 13, sub-s. 1, of the Finance (1909-10) Act, 1910, the trustees claimed exemption under s. 14, sub-s. 1, on the ground that the reversion was purchased before April 30, 1909:—

*Held* by the C. A. (Cozens-Hardy M.R. and Kennedy L.J., Buckley L.J. dissenting),

**REVENUE (Reversion Duty)—continued.**

that the word "purchase" in s. 14, sub-s. 1, was used in the ordinary commercial sense of "buy" and not in the more technical sense of "purchase for valuable consideration," and that the reversion in question was not exempt from duty.

Decision of Horridge J. [1913] 1 K. B. 220, affirmed. *INLAND REVENUE COMMRs. v. GRIBBLE* - - - C. A. [1913] 3 K. B. 212; 82 L. J. (K. B.) 900; 108 L. T. 887; [1913] W. N. 136; 29 T. L. R. 481; 57 S. J. 476

*Surrender of lease—Basis for ascertaining total value of land at the time of original grant of lease—Tenancy at will—Right to lease—Finance (1909-10) Act, 1910 (10 Edw. 7 c. 8), s. 13.*

The provisions in s. 13, sub-s. 2, of the Finance (1909-10) Act, 1910, with reference to the ascertainment of the total value of land at the time of the original grant of a lease are exclusive, and provide the only method in which the total value of the land at the time of the original grant of the lease is to be ascertained, and therefore other evidence as to the real value of the land at the time of the granting of the lease cannot be given.

Property on the R. estate, Huddersfield, was, before 1860, largely held on tenancy by "tenant right." A person desiring to obtain land on "tenant right" applied to the agent for the estate for permission to build upon the land selected, and upon approval by the agent of the plot and plans for building, and upon agreement as to the rent to be paid, was allowed to enter upon the land on the understanding that he would build thereon. His name was then entered upon the tenant roll of the estate. If a tenant wished to sell his house, he purported to surrender the property to the landlord, and the name of the purchaser was then entered on the tenant roll; if he died, the name of the next of kin or legatee was substituted on the tenant roll. The rent payable by a tenant by "tenant right" was about one half of what he would have paid if the land had been taken on a renewable lease. No lease was granted to a tenant by "tenant right," but he had an expectation that he would not be disturbed so long as the rent was paid. In 1849 M. applied for permission to become a tenant by "tenant right" of a piece of land, and was allowed to enter into possession of the land on the understanding that he would build thereon. He in fact expended about 350*l.* in the erection of a house. The rent of the plot was fixed at 1*l.* 7*s.* per annum. In 1867 the then owner of the R. estate granted a lease, at a ground rent of 1*l.* 16*s.* 8*d.*, of this piece of land for ninety-nine years to C., as being the person then entitled to the "tenant right" granted to M. In Oct., 1910, this lease was surrendered in pursuance of an agreement by the present owner of the estate to grant a new lease of the land for 999 years at an increased ground rent. The Inland Revenue Commrs., in assessing the reversion duty payable by the lessor under s. 13 of the Finance (1909-10) Act, 1910, on such surrender, valued the total value of the land at the time of the original grant of the lease at 40*l.* 6*s.* 8*d.*, being twenty-two years' purchase of 1*l.* 16*s.* 8*d.*, the rent reserved by the lease. The lessor claimed that the value of the undertaking to

**REVENUE (Reversion Duty)—continued.**

build given by M. when he entered into possession ought also to be taken into account:—

*Held*, that tenants by "tenant right" had no higher right in their property than that of a tenant from year to year, and that the undertaking by M. in 1849 to erect buildings on the land was not connected in any way with the grant of the lease to C. in 1867, and could not therefore be taken into account in ascertaining the total value of the land at the time of the granting of the lease in 1867, even assuming that the rent of 1*l.* 16*s.* 8*d.* reserved by the lease was a nominal rent.

*Held*, further, that the surrender by C. of his "tenant right" in the property in 1867 on the granting of the lease could not be taken into account as a "payment" within sub-s. 2 of s. 13 of the Act of 1910, as he had no legal right in the property beyond that of a tenant from year to year.

*Ramsden v. Dyson* (1866) L. R. 1 H. L. 129, considered. *RAMSDEN v. INLAND REVENUE COMMRs.* - - - Horridge J. [1913] 3 K. B. 580; 82 L. J. (K. B.) 1290; 109 L. T. 105

*Surrender of lease—Grant of new lease—Benefit accruing to lessor—Deduction—Compensation payable by lessor at determination of lease—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13, sub-s. 2—Revenue Act, 1911 (1 Geo. 5, c. 2), s. 3, sub-s. 2.*

In ascertaining the value of the benefit accruing to a lessor, by reason of the determination of a lease, for the purpose of the reversion duty payable under s. 13, sub-s. 1, of the Finance (1909-10) Act, 1910, there is, by sub-s. 2, to be deducted "all compensation payable by such lessor at the determination of the lease."

Two leases, which would have expired respectively in 1968 and 1966, were surrendered by the lessee to the lessor on Dec. 19, 1910, on which date the lessor granted to the lessee a new lease of the hereditaments comprised in the two leases at the same rent for a term expiring in 1979. The new lease was expressed to be made in consideration of the surrender of the two leases. If there had been a surrender of the two leases and no new lease had been granted, the value of the benefits thereby accruing to the lessor would have been, respectively, 395*l.* and 1340*l.* The Commrs. claimed reversion duty on those two sums:—

*Held*, that the grant of the new lease was not compensation payable by the lessor at the determination of the two leases within the meaning of s. 13, sub-s. 2, and that reversion duty was payable on the sums claimed.

Decision of Horridge J. [1913] 1 K. B. 356, reversed. *INLAND REVENUE COMMRs. v. MARQUESS OF ANGLESEY* - C. A. [1913] 3 K. B. 62; 82 L. J. (K. B.) 811; 108 L. T. 769; [1913] W. N. 147; 29 T. L. R. 495; 57 S. J. 517

**Settlement Estate Duty.**

*Property deemed to pass on death—Settlement not in consideration of money or money's worth—Death of settlor within three years—*

**REVENUE (Settlement Estate Duty)—continued.**

*Property passing "under that disposition on the death of the deceased."*—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2, sub-s. 1 (c); s. 5.

By s. 1 of the Finance Act, 1894, estate duty is leviable upon the principal value of all property, settled or not settled, which passes on the death of the deceased.

By s. 2, sub-s. 1, "Property passing on the death of the deceased shall be deemed to include" (c) property which would be required on the death of the deceased to be included in an account under s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Customs and Inland Revenue Act, 1889, if those sections were therein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" were omitted therefrom.

By s. 5, "(1.) Where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property," a further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied.

By a deed, which was made in consideration of natural love and affection, the owner of certain property settled it upon his son for life with remainders over. The settlor died within three years after the execution of the deed. The property came within the class referred to in s. 2, sub-s. 1 (c), of the Finance Act, 1894, and estate duty was paid in respect thereof upon the death of the settlor. The Crown also claimed settlement estate duty under s. 5:—

*Held*, that the property comprised in the deed passed on the execution of the deed and not "at the death of the deceased"; the words of s. 5, sub-s. 1, must be taken in their natural sense and not as referring to a notional passing under s. 2, sub-s. 1. Therefore settlement estate duty was not payable.

Decision of Horridge J. [1913] 1 K. B. 337 reversed. *ATT.-GEN. v. MILNE*

C. A. [1913] 2 K. B. 606; 82 L. J. (K. B.) 773; 106 L. T. 772; [1913] W. N. 158; 57 S. J. 532

**Stamp Duty.**

*Conveyance on sale—Patent rights in foreign countries—"Property locally situated out of the United Kingdom."*—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, sub-s. 1.

Patent rights in foreign countries and the colonies are not "property locally situate out of the United Kingdom" within the exception in s. 59, sub-s. 1, of the Stamp Act, 1891, and therefore a memorandum of agreement of sale of such rights made in this country is liable to an ad valorem conveyancing duty.

*Smelting Co. of Australia v. Inland Revenue Commrs.* [1897] 1 Q. B. 175, has not been overruled by *Inland Revenue Commrs. v. Muller* [1901] A. C. 217.

Decision of Horridge J., 29 T. L. R. 141, affirmed. *URBAN AND ANOTHER v. INLAND REVENUE COMMRS.* C. A. 29 T. L. R. 476

**REVENUE (Stamp Duty)—continued.**

—Stamp duties—New South Wales Stamp Duties (Amendment) Act, 1904, s. 21.  
See AUSTRALIA.

**Super-tax.**

See above, *Income Tax*.

**Undeveloped Land Duty.**

*Agricultural land—Lease made before April 30, 1909—Power to determine tenancy—Lessor not desirous to resume possession before termination of lease—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 17, sub-s. 5.*

Appeal from Scrutton J.

By a lease of Dec., 1906, a co. demised agricultural land from Sept., 1904, for seven years. The lease contained a reservation to the lessors of "full liberty for them at any time and from time to time during the term to enter upon and resume possession for building or other purposes of any part or parts of the said land." The Crown claimed from the lessors undeveloped land duty for the years 1910-11 and 1911-12 on the land comprised in the lease on the ground that they had "power to determine the tenancy" within the proviso to s. 17, sub-s. 5, of the Finance (1909-10) Act, 1910. The Commrs. admitted that the lessors did not want any part of the land "for building or other purposes" before the determination of the lease.

Scrutton J. held (affirming the decision of the referee) that the lessors had power to determine the tenancy and were therefore liable to pay undeveloped land duty.

The lessors appealed.

The C. A. allowed the appeal, holding that in order to give the lessors a right of re-entry which they could enforce against an unwilling tenant they must not only have a wish to re-enter but must also have a bona fide intention to use the land for building or some other purpose within the power. It was admitted that they had no such intention; therefore the power did not arise, and they were not within the proviso to s. 17, sub-s. 5. *SOUTHEND-ON-SEA ESTATES CO., LD. v. INLAND REVENUE COMMRS.*

C. A. [1913] W. N. 354; 30 T. L. R. 141; 58 S. J. 137

*Person chargeable—Owner for the time being—Purchaser in possession before execution of conveyance—Right of appeal—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 19, 33, 41.*

Appeal against a decision of a referee under the Finance (1909-10) Act, 1910.

The appellant Allen had been assessed by the Commrs. of Inland Revenue to undeveloped land duty in respect of certain plots of land. These plots formed part of an estate which Allen had purchased and cut up into plots. The plots had been sold by Allen to different persons under agreements which provided for payment by instalments, and for the execution of conveyances on the completion of the payments. At the date of the assessment the purchasers of the plots were in possession, but, not having completed their payments, had not received their conveyances. Allen appealed to the referee against the assessment, on the ground that he

**REVENUE (Undeveloped Land Duty)—contd.**

was not "the owner of the land for the time being" within the meaning of ss. 19 and 41 of the Finance (1909-10) Act, 1910.

The referee held that Allen was the owner for the time being of the plots in question.

Allen appealed.

A preliminary objection was taken on behalf of the Commrs. that under s. 33 neither the referee nor the High Court had power to decide, on an appeal against an assessment, the question whether the person assessed was chargeable with the duty, and that the proper time to decide that question was when proceedings were taken for the recovery of the duty.

Scrutton J. held that the preliminary objection failed, and allowed the appeal on the ground that the purchasers, and not the appellant, were the owners, they being beneficial owners in possession, entitled to the rents and profits of the land by an equitable fee simple or beneficial ownership, defeasible on non-payment, but convertible into a legal fee simple on payment. *ALLEN v. INLAND REVENUE COMMS.*

Scrutton J. [1913] W. N. 376

**REVERSION—Duty.**

See **REVENUE—Reversion Duty.**

— Merger—Tenancy for life and freehold reversion—Executory gift over—Conveyance of life estate—Intention.

See **MERGER.**

— "Purchase" of reversion—Marriage settlement.

See **REVENUE—Reversion Duty.**

— Severance.

See **LIMITATIONS, STATUTES OF—Real Property Limitation Acts—Tenancy.**

— Specific devise of—Lease by testator—Covenant by lessor—Liability for performance after lessor's death.

See **ADMINISTRATION.**

— Surrender of lease—Grant of new lease.

See **REVENUE—Reversion Duty.**

**REVERSION DUTY**—Benefit accruing to the lessor—Basis of ascertainment of.

See **REVENUE—Reversion Duty.**

**REVIEW**—Workmen's compensation.

See **WORKMEN'S COMPENSATION.**

**REVISING BARRISTER.**

See **PARLIAMENT.**

**REVOCATION**—Probate.

See **PROBATE.**

**RIGHT OF WAY.**

See **WAY, RIGHT OF.**

**RIGHTS OF COMMON.**

See **COMMON.**

**RIPARIAN PROPRIETORS**—Artificial water-

course—Mill stream—Common owner—

Easement—Presumption from user—

General words.

See **WATER.**

**RIVER**—Pollution—Injunction—Court of Appeal—Jurisdiction—Discharge of injunction on subsequent evidence—Reference to expert—Breach of statutory duty by public body—Remedy—Right of Att. Gen. to injunction—Public Health Act, 1878 (38 & 39 Vict. c. 55), s. 17—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 13, 15, 17—Order XXXVI, rr. 49, 55c; Order LVIII, rr. 1, 4.

ATT.-GEN. v. BIRMINGHAM, TAME AND REA DISTRICT DRAINAGE BOARD - H. L. (E.)

[1912] A. C. 788; 82 L. J. (Ch.) 45; 11 L. G. R. 194; 76 J. P. 481

— Public footpath running along bank of river

— Danger to public using footpath—

Liability of owner of bank to repair.

See **HIGHWAY.**

**ROAD**—School—Attendance—Reasonable excuse

for not attending—Distance from school

— Measurement—"Nearest road"—By-

law.

See **SCHOOL.**

**ROYALTIES**—Rents and—Mining lease—Quality of estate.

See **SETTLED LAND.**

**RULES AND ORDERS OF COURT.**

*Rules and Orders of Court judicially considered during 1913. See Table of Rules and Orders of Court judicially considered, ante, p. cxvii.*

*Rules and Orders of Court, &c., published in the Weekly Notes during 1913. See ante, p. cxxxi.*

See also **ORDERS OF COURT.**

**RULES PUBLICATION ACT, 1893.**

See **INSURANCE—National.**

**SALE**—Agreement to give an option to purchase and also a commission on sale—Construction—Appeal from Manitoba.

See **VENDOR AND PURCHASER.**

— Coal.

See **COAL.**

— Company—Resolution sanctioning sale by company of all its assets and division amongst debenture-holders accepting lowest price—Invalidity.

See **COMPANY—Debentures—Sale.**

— Company—Sale of undertaking and assets in consideration of shares in purchasing company—Distribution of proceeds.

See **COMPANY—Sale.**

— Disused burial ground.

See **BURIAL GROUND.**

— Food and drugs.

See **ADULTERATION.**

— Goods.

See **SALE OF GOODS.**

— Negligence—Dangerous article—Sale by manufacturer to shopkeeper—Purchase by plaintiff from shopkeeper—Defect unknown to manufacturer—Injury to plaintiff—Liability of manufacturer.

See **NEGLIGENCE.**



**SALE—continued.**

— Partition action.

See **PARTITION.**

- Railway—Carriage of goods—Reasonable time for delivery—Strike of railway company's servants—Perishable goods—Sale by agent of necessity.

See **RAILWAY.***Shares—Warranty or representation—Test of warranty.*

The plt. asked the local manager of a firm of rubber merchants, who had underwritten a large number of shares in a rubber and produce co. then in the course of formation, whether his firm were bringing out a rubber co. He replied that they were. The plt. then asked him whether the co. was all right. The manager replied that his firm were bringing it out, to which the plt. rejoined that that was good enough for him. In answer to further inquiries the manager told the plt. that he could let him have 5000 shares at a certain premium. The plt. agreed to take the shares, which were subsequently allotted to him. The shares having fallen in value, the plt. brought an action against the firm for fraudulent misrepresentation and for breach of warranty, the alleged warranty being that the co. was a rubber co. The jury negatived fraudulent misrepresentation but found that the co. could not be properly described as a rubber co. and that the manager had given a warranty as alleged:—

*Held*, that there was no evidence proper to be submitted to the jury upon the question of warranty.

Decision of the C.A. reversed.

*Per* Lord Moulton (with the concurrence of Viscount Haldane L.C.): The question whether an affirmation made by the vendor at the time of sale constitutes a warranty depends on the intention of the parties to be deduced from the whole of the evidence, and the circumstance that the vendor assumes to assert a fact of which the purchaser is ignorant, though valuable as evidence of intention, is not conclusive of the question.

The dicta of Bayley J. in *Cave v. Coleman* (1828) 3 Man. & Ry. 2, and of A. L. Smith M.R., delivering the judgment of the C. A., in *De Lassalle v. Guildford* [1901] 2 K. B. 215, at p. 221, cannot be supported. **HEILBUT, SYMONS & CO. v. BUCKLETON** - **H. L. (E.)** [1913] A. C. 30; 20 Mans. 54; 107 L. T. 769; 82 L. J. (K. B.) 245

— Trust for sale—Settlement.

See **SETTLEMENT.**

— Vendor and purchaser.

See **VENDOR AND PURCHASER.****SALE OF FOOD AND DRUGS—Adulteration.**See **ADULTERATION.****SALE OF GOODS.***Auction, col. 552.**Contract, col. 552.**Damages for Breach of Contract, col. 554.**Hire and Purchase, col. 556.**Warranty, col. 557.***SALE OF GOODS—continued.****Auction.**

*Misleading catalogue—Lot put up for sale—Mistake by bidder as to subject-matter—Action for price—Parties not ad idem.*

The plts. instructed an auctioneer to sell by auction a number of bales of hemp and of tow. The goods were described in the auctioneer's catalogue as so many bales in different lots with the same shipping marks and without disclosing the difference in the commodities. Before the sale samples of the hemp and tow were on view in a show-room on the floor of which the catalogue numbers of the lots of hemp and tow were marked in chalk opposite the respective samples, and the defts.' manager examined the hemp but not the tow, as he was not intending to bid for tow. When the lots representing the tow were put up for sale in the auction room, the defts.' buyer made a bid which was an extravagant price for tow, and the lots were at once knocked down to him.

In an action against the defts. for the price of the tow the jury found that the auctioneer intended to sell tow; that the defts.' buyer intended to bid for hemp; that the auctioneer believed that the bid was made under a mistake, but that he had reasonable grounds for believing that the mistake was merely as to value; that the form of the catalogue and the negligence of the defts.' manager in not more closely examining the samples at the show-room and identifying them with the lots in the catalogue contributed to cause the mistake:—

*Held*, on these findings, that the parties were never ad idem as to the subject-matter of the proposed sale, and that there was, therefore, no contract of sale.

*Held*, also, that the finding of the jury as to the negligence of the defts.' manager ought to be disregarded, as he owed no duty to the plts. to examine the samples of tow. **SCRIVEN BROTHERS & CO. v. HINDLEY & CO.**

Lawrence J. [1913] 3 K. B. 564; 109 L. T. 526

**Contract.**

*C.i.f. — Cash in exchange for shipping documents—Shipment within certain dates—Shipment by steamer in steamer, direct or indirect to port of destination — Transhipment — Tender of bill of lading from port of transhipment.*

**LANDAUER & CO. v. CRAVEN & SPEEDING BROTHERS** - Scrutton J. [1912] 2 K. B. 94;

81 L. J. (K. B.) 650; 17 Com. Cas. 193; 106

L. T. 298; 56 S. J. 274; 12 Asp. Mar. Law

Cas. 182

*C.i.f.—Construction—Sale of cargoes c.i.f. — Delivery by ship—"Cost of stevedoring to be paid by" purchaser — Shipowners' contribution — Appeal from New South Wales.*

**WHITE v. WILLIAMS** - P. C. [1912] A. C.

814; 82 L. J. (P. C.) 11; 12 Asp. Mar. Law

Cas. 208; 128 T. L. R. 521

*C.i.f.—Delivery—Safe arrival of goods at destination—Non-insurance of the goods—Obligation of buyer to accept—Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 28.*

When goods are sold under a c.i.f. contract,

**SALE OF GOODS (Contract)—continued.**

but the seller does not effect an insurance upon them for the transit, they are not delivered in accordance with the contract, although they arrive safely at their destination, and the buyer is not bound to accept them or to pay the price. *ORIENT CO., LD. v. BREKKE & HOWLID*

Div. Ct. [1913] 1 K. B. 531; 82 L. J. (K. B.) 427; 18 Com. Cas. 101; 108 L. T. 507; [1913] W. N. 48

*Condition as to resale—Middleman—Contract between purchaser and original vendor—Consideration—Restraint of trade.*

Trial of action before Phillimore J. without a jury.

The plts. had, on Oct. 12, 1911, entered into a contract with Messrs. Dew & Co. to sell to them as middlemen motor tyre covers and tubes. Dew & Co. were to receive certain discounts. They bound themselves never to sell below a certain price. In case of any sale of tyres, covers, tubes, &c., they agreed as agents for the plts. in this behalf to obtain from purchasers a written undertaking that the purchasers would similarly observe the plts.' list prices, terms and conditions of sale current at the time of the sale, on any resale by them, and not to allow the discounts to any purchaser without previously obtaining such a written undertaking. They further agreed not to supply any Dunlop goods to any person whose supplies the plts. requested them to suspend, and not to exhibit Dunlop goods or export Dunlop tyre covers or tubes, without the plts.' written consent. They agreed to pay 5% for every tyre, cover, or tube sold in breach of this agreement as and by way of liquidated damages and not as a penalty.

Having so bound themselves, Dew & Co., on Jan. 2, 1912, made a contract with the defts. by which the latter agreed not to sell Dunlop motor tyres, covers, or tubes at prices below those mentioned in the plts.' price list current at the time of sale, nor to supply Dunlop goods to any person whose supplies the plts. might request Dew & Co. or the defts. to suspend, nor to exhibit goods of the plts.' manufacture, nor to export tyres, covers, or tubes, without the written consent of the plts. They also agreed "to pay to the Dunlop Pneumatic Tyre Company, Limited, the sum of 5% for every tyre, cover, or tube, sold or offered in breach of this agreement as and by way of liquidated damages and not as a penalty, but without prejudice to any other rights or remedies which you"—namely, Dew & Co.—"or the Dunlop Pneumatic Tyre Company, Limited, may have hereunder." The correspondence shewed that the defts. knew they were entering into a contract with the plts. and intended to do so. After entering into this contract the defts. sold two tyres below the plts.' list price. The plts. claimed 10% damages and an injunction.

Phillimore J. gave judgment for the plts. for 10%, and granted an injunction restraining the defts. from further selling tyres in breach of the agreement of Jan. 2, 1912. *DUNLOP PNEUMATIC TYRE CO., LD. v. SELFRIDGE & CO., LD.*

Phillimore J. [1913] W. N. 46;

29 T. L. R. 269

**SALE OF GOODS (Contract)—continued.**

*"Free on board"—Goods sent by seller to buyer by sea—Notice by seller of shipment—Risk during voyage—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 32, sub-s. 3.*

By sub-s. 3 of s. 32 of the Sale of Goods Act, 1893, "Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit".—

*Held* by Vaughan Williams and Buckley L.J.J. (Hamilton L.J. dissenting), that sub-s. 3 applies to a contract for the sale of goods f.o.b.

The plts. sold to the defts. goods "f.o.b. Antwerp to be shipped as required by buyers, cash against bills of lading." Subsequently, on Aug. 9, the defts. sent instructions to the plts. to ship the goods to Odessa and to pay freight on their account, leaving it to the plts. to select the ship. The goods were shipped at Antwerp on Aug. 24, on a steamer which sailed on the 25th, and became, with the goods, a total loss on the 26th. The defts. received no information as to the shipment until the 29th, when the bills of lading were presented for payment. The defts. had not insured, and they refused to pay for the goods upon the ground that the plts. had not given them such notice as was required by sub-s. 3:—

*Held* by Buckley L.J. (Vaughan Williams L.J. dissenting), that before the goods were shipped the defts. had all information necessary to enable them to insure, and that, therefore, there was no obligation upon the plts., under sub-s. 3, to give notice to the defts. of the shipment on a particular ship.

Decision of Bailhache J. [1913] 1 K. B. 279, accordingly affirmed. *WIMBLE, SONS & CO. v. ROSENBERG & SONS* C. A. [1913] 3 K. B. 743; 82 L. J. (K. B.) 1251; 12 Asp. Mar. Law. Cas. 275; 109 L. T. 294; 18 Com. Cas. 302; [1913] W. N. 269; 29 T. L. R. 752; 57 S. J. 784

**Damages for Breach of Contract.**

*Non-acceptance—Goods ordered to be manufactured—Measure of damages—Company—Voluntary winding-up—Proof—Double profit.*

The Vic Co. were in voluntary liquidation. Before the winding-up they had ordered certain machines to be made by a firm of engineers, which, owing to the winding-up, they were unable to accept. The creditors put in a claim for damages for 1167*l.* 13*s.* 6*d.*, being the amount of the profits which they estimated they would have made, if the contract had been carried out. The liquidators rejected this claim, and Neville J. referred the matter to the district registrar for an inquiry for what sum, if any, the applicants should be allowed to prove in the winding-up in respect of the items of machinery included in their claim, ordered by the co. but not delivered. The registrar divided the machines as to which claims were made into two classes: (1.) Machines which had been completed by the creditors before the

**SALE OF GOODS (Damages for Breach of Contract)—continued.**

date of the winding up, retained by the creditors for a time, and then somewhat altered and sold to other customers at a price less than the contract price. On these he allowed the difference between the price realized and the contract price plus the estimated cost of the alterations, a sum amounting to 28*l.* instead of 162*l.* 1*9s.* claimed. (2.) Machines which would have been wholly or partially manufactured by the creditors, on which they had done no work, but for some of which they had purchased subordinate parts ready made, which they had afterwards used in fulfilling other orders. On these the registrar thought that the creditors were entitled to have the loss of profits taken into account; but he held that the actual loss directly or naturally resulting from the breach of contract did not amount to anything approaching the whole of such prospective profit, and he assessed the damages at 280*l.* instead of the 1002*l.* 1*s.* 3*d.* claimed. There was no available market for the goods and no evidence that the claimants could not have carried out the contract as well as all their other contracts:—

*Held*, affirming the decision of Neville J., reported [1913] 1 Ch. 183, that the claimants were entitled to the whole of the profits which they claimed. *In re VIO MILL, LD.* - G. A.

[1913] 1 Ch. 465; 82 L. J. (Ch.) 251; 108 L. T. 444; [1913] W. N. 96; 57 S. J. 404

*Resale by buyers—Non-delivery by original seller—Rise in prices—Measure of damages.*

By a contract made in 1910, A. sold to W. certain coal at 16*s.* 3*d.* per ton c.i.f. Genoa, to be shipped every two months, one of the cargoes to be shipped in Nov., 1911. In Oct., 1911, W. sold that expected cargo to G. at 19*s.* per ton c.i.f. Genoa. In respect of this sale two notes were sent to G., one being sent by a broker and the other by W. direct. The broker's note was sent first to G., being followed a day or two later by the other note. This latter note contained a term that W. was under no obligation to deliver the cargo unless he got a similar cargo due to them from A. In Nov., 1911, A., apprehensive of being unable to ship the cargo in question, bought the same cargo from G. and paid him therefor. Default having been made by A. in shipping the Nov. cargo, and the price of coal having, at the material date, risen to 23*s.* 6*d.* per ton, W. claimed to be entitled to recover from A. the difference between the price—16*s.* 3*d.* at which he bought, and the market price, 23*s.* 6*d.*

*Held* (Hamilton L.J. dissenting), that the broker's note governed the contract and that in the circumstances that happened W. was only entitled to recover from A. the difference between 16*s.* 3*d.* and 19*s.* per ton.

*Per* Bray J.: *Rodocanachi v. Milburn* (18 Q. B. D. 67) is still good law, and is not affected either by the Sale of Goods Act, 1893, or the decision in *Wertheim v. Chicoutimi Pulp Co.* [1911] A. C. 301.

Decision Of Bailhache J. reversed. *In re WILLIAMS BROTHERS AND E. T. AGIUS, LD.*

C. A. 18 Com. Cas. 237; 108 L. T. 906; 29 T. L. R. 516

**SALE OF GOODS (Damages for Breach of Contract)—continued.**

—Warranty—Breach—Damages.

See below, Warranty.

**Hire and Purchase.**

*Contract or option to buy—Pledge—Conversion—Interest of pledgee in chattel—Measure of damages—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 9—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 25, sub-s. 2.*

By an agreement in writing dated Dec. 10, 1910, the plts. let to the Motor Manufacturing Co. and Alfred Burgess, Ltd., therein called the hirer, a Belstze motor taxi-cab. The agreement contained (inter alia) the following terms:—

"4. The hirer shall not re-let, sell or part with the possession of the said motor taxi-cab or remove it from 3, The Mall, Church Street, Finchley, N., without the previous consent in writing of the owners or their said agents.

"5. If the hirer should on or before the expiration of twenty-four calendar months be desirous of purchasing the said motor taxi-cab, he shall be at liberty so to do by making the amount of hire paid on this account equal to the sum of four hundred and twenty-six pounds eleven shillings and six pence, without any deduction whatsoever, and if the hirer shall be desirous of purchasing the said motor taxi-cab at the end of twelve months, he shall be at liberty so to do by making the amount of hire paid on this account equal to the sum of 424*l.* 11*s.* 6*d.*, without any deduction whatsoever.

"6. Should the hirer make default in payment of the hire for one calendar month after it becomes due . . . or commit any breach of clauses 3 or 4 hereof, it shall be lawful for the owners or their said agents and they are hereby authorized to take possession (forcible if necessary and for this purpose to break open doors) of the said motor taxi-cab and terminate this agreement and the moneys then in the hands of the owners or their said agents by virtue hereof, whether by way of hire or otherwise, shall be forfeited by the hirer and become the absolute property of the owners."

In breach of this agreement, on Aug. 28, 1911, the Motor Manufacturing Co. and Alfred Burgess, Ltd., deposited the motor taxi-cab with the deft. as security for an advance made by the deft. to the co. The deft. took the cab in good faith and without notice of the plts.' rights. The plts., on hearing what had happened, demanded from the deft. the return of the taxi-cab. The deft. refused to return it. The plts. then brought this action, claiming the cab or its value and damages for its detention. The deft. pleaded s. 9 of the Factors Act, 1889, and s. 25 of the Sale of Goods Act, 1893, which is in substantially the same terms:—

Channell J. *held* that the agreement conferred an option to buy, and therefore that the case came within *Helby v. Matthews* [1895] A. C. 471. He accordingly gave judgment for the plts., but, following the principle of *Brierley v. Kendall* (1852) 17 Q. B. 937, and *Chinery v. Viall* (1860) 5 H. & N. 288, the learned judge held that, as the deft. had an interest in the cab, the measure of damages was not the full value

**SALE OF GOODS (Hire and Purchase)—contd.**

of the cab, but so much of the purchase-money as remained unpaid, namely, 58*l.* 9*s.* **BELSIZE MOTOR SUPPLY CO. v. COX**

Channell J.  
[1913] W. N. 319

**Warranty.**

*Breach of warranty—Sale of diseased meat to butcher for resale—Conviction of purchaser—Loss of trade—Measure of damages.*

The defts., who were salesmen, sold to the plt., a butcher, for the purpose of sale in his shop, meat unfit for human food, he relying on their skill and judgment and not knowing that the meat was bad. The meat was seized in the shop by an inspector and ordered by a magistrate to be destroyed; and the plt. was convicted under s. 47, sub-s. 2, of the Public Health (London) Act, 1891, of having the bad meat on his premises and was fined. In an action for damages for breach of warranty the jury awarded damages in respect of the fine and costs and also for loss of trade owing to the conviction:—

*Held*, that the plt. was entitled to recover the damages in respect of the fine and costs and for his loss of trade. **COUNTAT v. MYHAM & SON** Lord Coleridge J. [1913] 2 K. B. 220; 82 L. J. (K. B.) 551; 11 L. G. R. 760; 108 L. T. 556; [1913] W. N. 98; 77 J. P. 217; 29 T. L. R. 387

*Horse purchased for stud purposes — Verbal representation by seller of soundness — Express warranty—Form of question left to jury.*

Plt., requiring a stallion for stud purposes, inspected a horse, the property of the deft., a horse dealer. Plt. swore that while he was looking at the horse the deft. said to him, "You need not look for anything; the horse is perfectly sound. If there was anything the matter with the horse, I would tell you." Some days afterwards the price was agreed upon, but as plt. was purchasing for a foreign government department, the sale was not finally completed, and the horse was not delivered for about a month. The horse was afterwards found to be affected by an incurable and hereditary disease of the eyes, which rendered him totally unfit for the stud. In an action brought on an express warranty that the horse was sound and free from hereditary disease, the deft. denied that he spoke the above words or anything to that effect, or gave any warranty. The judge at the trial in charging the jury said, "The question you have to try is—Did the defendant at the time of the sale represent to the plaintiff, in order that the plaintiff might purchase the horse, that the horse was fit for stud purposes and was sound?" And, after referring to the conflicting evidence, "There was direct contradiction, which of them do you believe? . . . Did the plaintiff act on that representation in the purchase of the horse?" And he left in writing to the jury (inter alia) the question, "Did the defendant at the time of the sale represent to the plaintiff, in order that the plaintiff might purchase the horse, that the horse was fit for stud purposes, and did the plaintiff act on that representation in the purchase of the horse?" The jury answered in the affirmative.

**SALE OF GOODS (Warranty)—continued.**

The deft.'s counsel had requested the judge to leave to the jury the question, Did the deft. warrant the horse sound, or did the deft. represent the horse as sound to his knowledge?

The C. A., having directed a new trial on the ground that the question actually left to the jury and their affirmative answer to it did not amount to a finding of an express warranty of soundness, and that the Court could not supply the defect by drawing inferences under Order XL., r. 9,—

*Held* by the H. L., reversing the judgment of the C. A., that the words deposed to by the plt. as having been used by the deft. constituted an express warranty of the soundness of the horse; and that although the word "warrant" or "warranty" did not appear in the question submitted to the jury, that question, especially taken in connection with the judge's charge, presented for the consideration of the jury all the elements of what constituted a warranty, and that their answer to it in the affirmative, shewing that they believed the plt.'s evidence, was a clear finding of an express warranty. **SCHAWEL v. READE** H. L. (Ir.) [1913] 2 I. R. 64

**SCHEME OF ARRANGEMENT—Company.**

*See* COMPANY.

**SCHOOL.**

*Board of Education Regulations. 1913. Grants in respect of the medical inspection and medical treatment of school children.* 11 L. G. R. Orders, &c. 70.

*Attendance*, col. 558.

*Charity.* *See* CHARITY.

*House Duty.* *See* REVENUE—House Duty.

*Non-provided School*, col. 560.

**Attendance.**

*Reasonable excuse—Cookery centre—Failure to attend.*

Case stated by justices.

An information was preferred by the appellant against the respondent charging him with having, on Mar. 3, 1913, neglected and omitted to cause his daughter, aged eleven years, to attend school. The girl was one of the scholars selected by the local education authority from the Lanjeth school to attend the cookery centre at Foxhole school, and the respondent had been officially notified of this fact.

The Lanjeth school was the nearest public elementary school to the residence of the child. There were no means of teaching cookery at the Lanjeth school. The Foxhole school was within two miles of the child's residence. On Mar. 3 the child was sent to the Lanjeth school, but was refused admission by the master and told to go to the cookery centre at Foxhole.

It was contended for the respondent that so long as the child was on the books of the Lanjeth school, the education authority had no power to order the child to attend another school to receive instruction in any special subjects.

The appellant contended that as the Board of Education had approved of the establishment of

**SCHOOL (Attendance)—continued.**

special centres for the instruction of children in special elementary subjects, including cooking, laundry, dairy work, and housewifery for girls, and as cookery was an approved part of the instruction for certain girls from Lanjeth and other schools, and the child in question was eligible and had been selected to take it, the attendance of the child at Foxhole school for the purpose of receiving such instruction was compulsory.

The justices dismissed the information on the ground that, the child having presented herself for admission at the Lanjeth school on Mar. 3, the local education authority had no right to order the child to proceed to Foxhole school for instruction in the subject of cookery.

The Court held that the contention of the appellant was right and allowed the appeal.  
**BUNT v. KENT** - Div. Ct. [1913] W. N. 331;  
[1914] 1 K. B. 207; 30 T. L. R. 77

*Reasonable Excuse—Defective or epileptic child—Medical certificate—Examination of child by magistrate—Evidence—Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), ss. 1 (1), (3), 11—Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 6.*

By s. 6 of the Education (Administrative Provisions) Act, 1909, "In any legal proceedings by a local education authority, the production of a certificate, purporting to be signed by a duly qualified practitioner . . . to the effect that a child is defective or epileptic . . . shall be sufficient evidence of the facts therein stated, unless the parent or guardian of the child . . . requires the medical practitioner to be called as a witness; but it shall be lawful for the parent or guardian to give evidence in proof that the certificate is incorrect."

On a summons against a parent for neglecting to cause a defective or epileptic child to attend school, the above-mentioned certificate was put in evidence, but the parent neither gave evidence nor required the practitioner to be called. The magistrate thereupon questioned the child and arrived at the conclusion that the child was not mentally defective, but merely dull or backward, and he dismissed the summons:—

**Held**, that the magistrate was not entitled to form his own opinion by questioning the boy, but was bound to act on the certificate, as it was not disputed. **REX v. DE GREY AND ANOTHER, Ex parte FITZGERALD**

Div. Ct. 77 J. P. 463

*Reasonable excuse—Sickness or unavoidable cause—Alleged existence of ringworm among the children attending—Tender of medical evidence in support—Admissibility—By-laws of education authority.*

A by-law of an education authority provided that "the parent of any child of not less than five years nor more than fourteen years of age shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse . . . (b) that the child has

**SCHOOL (Attendance)—continued.**

been prevented from attending school by sickness or any unavoidable cause."

In answer to a summons for breach of this by-law in failing to send her children to school after the summer holidays, 1912, the appellant tendered the evidence of a doctor as to the dirty and verminous condition of children attending the school in question; and it was admitted that two cases of ringworm had occurred before the summer holidays. It was also admitted that there might be reasonable excuses beyond those in the by-law, but the justices refused to accept the doctor's evidence and convicted the appellant:—

**Held**, that the justices ought to hear the doctor's evidence, and to determine whether a reasonable excuse existed.

*Semble*, that the excuse of "sickness or any unavoidable cause" in clause (b) is not necessarily personal to the child not attending school.  
**SYMES v. BROWN** - Div. Ct. 11 L. G. R. 1171;  
109 L. T. 232; 77 J. P. 345; 29 T. L. R. 473

*Reasonable excuse for not attending—Distance from school—Measurement—"Nearest road"—By-law—Public elementary school—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74.*

A by-law of a local education authority provided that it should be a reasonable excuse for a child's not attending school if there was no elementary school within three miles, measured "according to the nearest road," from the child's residence.

The route from a child's residence to a school consisted in part of a cart track which passed through a field forming part of a farm in the occupation of the child's father, and which constituted the approach to the house from the highway. The distance from the house to the school by this route was less than three miles:—

**Held**, that the word "road" in the by-law was not confined to roads of any particular class and included a cart track of the above description, and that the child was, therefore, not excused from attending the school. **HARES v. CURTIN** - Div. Ct. [1913] 2 K. B. 328;  
82 L. J. (K. B.) 707; 10 L. G. R. 753; 23 Cox, C. C. 411; 108 L. T. 974; 76 J. P. 313

**Charity.**

— Cy-pres—Gift for a school—Failure of particular object.  
*See CHARITY.*

**House Duty.**

— School buildings—"Offices belonging to any dwelling-house."  
*See REVENUE—House Duty.*

**Non-provided School.***Local Education Authority.*

*Dismissal of teacher—Notice of determination by local education authority—Dismissal on "educational grounds"—Appeal to Board of Education—Jurisdiction of Court—Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-ss. (1) (a), (3).*

A local education authority, acting upon reports by Government inspectors of schools,

**SCHOOL (Non-provided School)—continued.**

instructed the managers of a non-provided elementary school to serve notice of dismissal on the headmaster on educational grounds, and the managers having refused to do so, the authority served the notice themselves. The headmaster having applied for an injunction to restrain the local authority from acting upon the notice pending the result of an appeal by the managers to the Board of Education under the Education Act, 1902, s. 7, sub-s. 3:—

*Held*, that as the plt. did not deny that his dismissal was on educational grounds, but only questioned the sufficiency of the grounds, there was no case for the interference of the Court, and he was not entitled to an injunction.

Decision of Eve J., affirmed. *MITCHELL v. EAST SUSSEX C. C.* C. A. 58 S. J. 66

*New school—Power and duty of local education authority to provide furniture—Education Act, 1902 (2 Edw. 7, c. 42), ss. 7, 8.*

Where persons other than the local education authority provide a new school under the provisions of s. 8 of the Education Act, 1902, the local authority have power to provide and pay for the furniture required to equip it as a public elementary school by reason of the obligation imposed upon them by s. 7, sub-s. 1, to "maintain and keep efficient all public elementary schools within their area which are necessary."

Two new non-provided schools were opened as public elementary schools and each school was subsequently placed by the Board of Education upon the annual grant list as from the respective dates of opening. All the furniture for one school was supplied and paid for by the local education authority, before it was opened; the other school, when opened, was provided with furniture belonging to the managers, which was unsuitable and afterwards, but before the date when the Board of Education placed the school upon the grant list as from the date of opening, was removed by the local authority and replaced by new furniture at their expense:—

*Held* (Sir Samuel Evans, President, dissenting), that the local education authority had power to provide and pay for the new furniture of each school under s. 7, sub-s. 1, of the Education Act, 1902.

Decision of the majority of the Div. Ct. (Pickford and Bankes J.J., Darling J. dissenting as to the unfurnished school) [1912] 2 K. B. 161, affirmed. *REX v. EASTON*. *Ex parte OULTON*. C. A. [1913] 2 K. B. 60; 82 L. J. (K. B.) 618; 11 L. G. R. 279; 108 L. T. 471; [1913] W. N. 8; 77 J. P. 177; 29 T. L. R. 200; 57 S. J. 226

**Managers.**

*Duty to maintain and keep efficient—Powers of management—Appointment and payment of caretaker—Education Act, 1902 (2 Edw. 7, c. 42), s. 7.*

The managers of a non-provided public elementary school, in exercise of the powers of management conferred upon them by s. 7, sub-s. 7, of the Education Act, 1902, are entitled

**SCHOOL (Non-provided School)—continued.**

to appoint a caretaker and cleaner of the school, and to have their salaries paid by the local education authority.

Order of the G. A. [1911] 2 K. B. 1974, reversed, and judgment of Hamilton J. [1911] 1 K. B. 222, restored. *GILLOW v. DURHAM C. C.* - H. L. (E.) [1913] A. C. 54; 82 L. J. (K. B.) 206; 11 L. G. R. 1; 107 L. T. 689; 77 J. P. 105

*Headmaster — Dismissal — Managers — Managing body—Foundation managers—Declaration as to membership of Church of England—Churchwardens — Qualification — Defect in appointment or qualification of any manager—Education Act, 1902 (2 Edw. 7, c. 42), ss. 6, 7, 11; Sched. I, B, clause 3. MEYERS v. HENNELLY, Eve J. [1912] 2 Ch. 256; 81 L. J. (Ch.) 794; 106 L. T. 1016; [1912] W. N. 150; 76 J. P. 321; 28 T. L. R. 424; 56 S. J. 538*

*Schoolmistress — Dismissal — Contract of service — Notice of determination — Powers of managers—Consent of local education authority — Dismissal "on grounds connected with the giving of religious instruction in the school"—Religious belief of teacher — Injunction — Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-s. 1 (c). SMITH v. MACNALLY Warrington J. [1912] 1 Ch. 816; 81 L. J. (Ch.) 483; 10 L. G. R. 434; 106 L. T. 945; [1912] W. N. 107; 76 J. P. 466; 28 T. L. R. 332; 56 S. J. 397*

**SCIENTER — Workmen's Compensation — Remedy both against employer and stranger—Damage from kick of horse—Liability of owner. See WORKMEN'S COMPENSATION.**

**SCOTTISH LAW.**

*Agent and Client*, col. 562.

*Building Contract*, col. 563.

*Company*. See COMPANY.

*Drainage*. See below, Local Government.

*Employer and Workman*. See WORKMEN'S COMPENSATION.

*Loan*, col. 563.

*Local Government*, col. 563.

*Patent*. See PATENT.

*Shipping*. See SHIPPING.

*Super-tax*. See REVENUE—Income Tax.

*Trust*, col. 564.

*Will*, col. 565.

*Workmen's Compensation*. See WORKMEN'S COMPENSATION.

**Agent and Client.**

*Negligence—Breach of duty—Solicitor and bank agent.*

Interlocutors of the Lord Ordinary and of the First Division of the Ct. of Sess. in Scotland, 1911 S. C. 1248, affirmed on the evidence. *LEAROYD OR DICK v. ALSTON*. H. L. (Sc.) [1913] A. C. 529

**SCOTTISH LAW—continued.****Building Contract.***Construction—Liquidated damages.*

Interlocutor of the First Division of the Ct. of Sess. in Scotland, 1912 S. C. 591, affirmed. **BRITISH GLANZSTOFF MANUFACTURING CO., LD. v. GENERAL ACCIDENT, FIRE AND LIFE ASSURANCE CORPORATION, LD.**

H. L. (Sc.) [1913] A. C. 143

**Company.**

— Contract to take shares—Rescission—Fraudulent misrepresentation—Quotation in prospectus of report by one of the directors.

See **COMPANY—Prospectus.****Drainage.**See below, **Local Government.****Employer and Workman.**

— Workmen's compensation—Dependants—Desertion by father—Decree for aliment  
See **WORKMEN'S COMPENSATION—Dependants.**

**Loan.**

*Local Government—Burgh—Issue of redeemable stock by municipal corporation—“Redeemable”—Edinburgh Corporation Stock Act, 1894 (57 & 58 Vict. c. lvi.), s. 5—Edinburgh Improvement and Tramways Act, 1896 (59 & 60 Vict. c. cccxv.), s. 83.*

By the Edinburgh Corporation Stock Act, 1894, the Corporation of Edinburgh, where they had any unexhausted statutory borrowing power, were authorized to exercise such power by the creation of redeemable stock, and by the Edinburgh Improvement and Tramways Act, 1896, the corporation, in addition to the powers contained in the Act of 1894, were authorized to create and issue a new class of stock to be “redeemable at the option of the corporation at one and the same period to be fixed by the corporation but not exceeding sixty years from the first issue of such stock.” In pursuance of this power the corporation issued stock to be redeemable at par after the expiration of a period of thirty years from May 15, 1897:—

*Held*, that the corporation were not bound, on the application of the holders, to redeem the stock immediately on the expiration of that period, but had merely an option to do so.

Decision of the Extra Division of the Ct. of Sess. in Scotland, 1912 S. C. 139, reversed. **EDINBURGH CORPORATION v. BRITISH LINEN BANK**

H. L. (Sc.) [1913] A. C. 133;  
82 L. J. (P. C.) 25; 11 L. G. R. 766;  
29 T. L. R. 25

**Local Government.**

*Burgh—Drainage and road authority—Flooding—Natural streams—Repairation—Negligence—Edinburgh Corporation Act, 1900 (63 & 64 Vict. c. cccviii.), s. 28.*

Interlocutor of the Second Division of the Ct. of Sess. in Scotland (1912 S. C. 1199) reversed, and interlocutor of the Lord Ordinary restored,

**SCOTTISH LAW (Local Government)—continued.**

on the facts. **HANLEY v. EDINBURGH CORPORATION**  
H. L. (Sc.) [1913] A. C. 488;  
77 J. P. 233; 29 T. L. R. 404; 57 S. J. 460

**Patent.**

See **PATENT—Infringement and Patent Agent.**

**Shipping.**

—Affreightment—Bill of lading—Exceptions—Liability for unmarked goods—Com-mixtio.

See **SHIPPING—Bill of Lading.****Super-tax.**See **REVENUE—Income Tax.****Trust.**

*Liability of trustees—Breach of trust—Action by assumed trustees to recover loss to trust estate caused by negligence of original trustee—Mora—Contributory negligence—Right of pursuers to represent beneficiaries—Interest—Rate of interest.*

A testator, who died in 1858, by his trust disposition and settlement gave to his son, on his attaining the age of twenty-five, an option to purchase his dwelling-house. In 1870 the son, who acted as agent in the trust, being then about to attain the age of twenty-five, announced to the trustees his intention to exercise this option, and the trustees signed and delivered to him a disposition of the house in his favour, which was duly recorded. The trustees took no steps either in 1870 or for seventeen years afterwards to obtain payment of the purchase-money, and the money never was paid. In 1887, the testator's widow being then the sole surviving trustee, the pursuers were assumed as trustees, and they endeavoured to make the son account for the trust estate, but subsequently ceased their efforts owing to the refusal of the widow to allow her son to be sued. In 1902, on the death of the widow, the assumed trustees brought an action of accounting against the son, but the action proved abortive by reason of his bankruptcy and death. Between 1887 and 1902 the son was in a position to make good the purchase-money. In 1909 the assumed trustees brought an action against the beneficiaries of a deceased trustee to recover the purchase-money alleged to have been lost to the trust estate through his negligence as trustee. The defenders pleaded *mora* as a bar to the action:—

*Held*, that the plea of *mora* was not sustainable against the pursuers suing as trustees on behalf of the beneficiaries, and that the defenders were jointly and severally liable, to the extent to which they were respectively lucrati from the estate of the deceased trustee, for the price of the house with interest thereon at the rate of 3½ per cent. per annum from the death of the widow.

Decision of the Second Division of the Ct. of Sess. in Scotland, 1912 S. C. 50, affirmed. **SCHULZE v. TOD**—H. L. (Sc.) [1913] A. C. 213

**SCOTTISH LAW—continued.****Will.**

*Construction—Succession—Provision to widow of "liferent and enjoyment" of house—Liferent or occupancy—Incidence of burdens.*

A testator by his will directed his trustees to give to his widow the "liferent, use, and enjoyment" of his house, to pay her an annuity, to set aside a certain sum to provide for the same, to distribute the residue of his estate between his widow and his brothers, and, on the death of his widow, to divide the price of the house and the annuity fund, with any surplus revenue accrued thereon, among his brothers. On the death of the testator the widow entered into possession of the house :—

*Held*, that the widow had a "liferent" and not a mere occupancy, and was liable to pay all rates and burdens on the property falling on the proprietor, and could not claim a right to be repaid by the trustees out of the testator's estate.

Judgment of the Second Division of the Ct. of Sess. in Scotland reversed. *Cuthcart's Trustees v. Allardice* (1899) 2 F. 326, disapproved. *MACKENZIE AND OTHERS v. JOHNSTONE AND ANOTHER* - - - **H. L. (Sc.) 107 L. T. 473**

**Workmen's Compensation.**

*See* WORKMEN'S COMPENSATION.

**SEAL**—Corporation—Contract not under seal—Executed consideration—Contract to pay implied from acceptance of benefit—Improvement Commissioners—Special Act.

*See* LOCAL GOVERNMENT.

**SEAMAN—Wages.**

*See* SHIPPING and WORKMEN'S COMPENSATION.

**SEAWORTHINESS.**

*See* INSURANCE—Marine and SHIPPING—Bill of Lading and Fire.

**SECONDARY EVIDENCE.**

*See* EVIDENCE.

**SECRET PROFIT**—Company—Liquidation—Liability of partners—Right of double proof.

*See* COMPANY—WINDING-UP.

**SECURED CREDITOR—Bankruptcy.**

*See* BANKRUPTCY.

**SEPARATION DEED—Divorce.**

*See* DIVORCE.

**SERVANT—Master and.**

*See* MASTER AND SERVANT.

**SERVICE.**

*Bankruptcy.* *See* BANKRUPTCY—Petition.

*County Court*, col. 566.

*Jurisdiction, Service out of*, col. 566.

*Justices.* *See* JUSTICES—Case Stated.

**SERVICE—continued.****Bankruptcy.**

—Petition—Person trading under partnership name.

*See* BANKRUPTCY—Petition.

**County Court.****Default Procedure.**

*Applies where defendants a limited company—Mode of service—"Personally served"—County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), s. 59—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 116.*

The default procedure provided by s. 59 of the County Officers and Courts (Ireland) Act, 1877, applies to a case in which the defts. are a limited co., and the process prescribed by that section may be served on such defts. by leaving it at, or sending it by post to, the registered office of the co., as provided by s. 116 of the Companies (Consolidation) Act, 1908. *NATIONAL GAS ENGINE CO., LD. v. ESTATE ENGINEERING CO., LD.*

**Div. Ct. [1913] 2 I. R. 474**

**Jurisdiction, Service out of.****Summons.**

*Foreclosure—Action founded on "breach of contract"—Service out of the jurisdiction—Practice—R. S. C., Order XI., rr. 1 (e), 8A.*

A foreclosure action, whether by writ or originating summons in respect of a mortgage of personalty, by the original mortgagee against the original mortgagor, is not an action founded on a breach of contract within the meaning of Order XI., r. 1 (e), and leave will not therefore be granted to serve the writ or summons upon the deft. out of the jurisdiction.

Decision of Neville J. [1913] 1 Ch. 181, reversed.

*Deutsche National Bank v. Paul* [1898] 1 Ch. 283, and *Kolchmann v. Meurice* [1903] 1 K. B. 534, followed. *HUGHES v. OXENHAM - C. A.* [1913] 1 Ch. 254; 82 L. J. (Ch.) 155; 108 L. T. 316; [1913] W. N. 11; 57 S. J. 158

—Justices.

*See* JUSTICES—Case Stated.

**Writ.**

*Landlord and tenant—Ejectment for non-payment of rent—Vacant possession—No personal representative of deceased tenant—Writ of summons—Description of defendants—Service by posting.*

In an ejectment for non-payment of rent to recover possession of a dwelling-house, which had been demised to E. W. by a lease for a term of which several years were unexpired, it appeared that E. W. was dead; that no person was in possession of the premises; that no representation had been taken out to E. W.; and that a year's rent was due. The writ of summons named as defts. "The assignees and personal representatives of" E. W., deceased, "and all other persons concerned." It was served by posting a copy on the door of the dwelling-house. An order was



**SERVICE (Jurisdiction, Service out of)—**  
*continued.*

made that such service should be deemed good.

*M'Cracken v. Keffly*, 5 New Ir. Jur. Rep. 46, followed. *Buggy v. WALSH'S REPRESENTATIVES* [1913] 2 I. R. 485

*Parties—Co-defendants—R. S. C. (Ir.), Order XI., r. 1 (h)—Action for tort—Principal and agent.*

W., who was resident in England, wrote a number of libels concerning C., who was resident in Ireland, and employed H., a bill-poster, also resident in Ireland, to post, publish, and circulate them in the vicinity of C.'s residence. In an action by C. against W. and H. for damages for the libels, H. being served in Ireland, and there being, in the opinion of the Court, no ground for alleging that he was not bona fide made a deft. :—

*Held*, that a concurrent writ was properly ordered to be served on W. in England.

*Ross v. Eason* ([1911] 2 I. R. 459) and *Sharples v. Eason* (ibid. 436, 442) distinguished. *COONEY v. WILSON AND HENDERSON - C. A. (Ir.)* [1913] 2 I. R. 402

*Public road—Repair—Excessive user of road—Public Roads (Ireland) Act, 1911 (1 & 2 Geo. 5, c. 45)—Action for expenses caused by excessive user—Nature of action—R. S. C. (Ir.), Order XI., r. 1.*

An action brought by a county council or an urban district council under the Public Roads (Ireland) Act, 1911, to recover extraordinary expenses necessary for repairing roads by reason of damage caused by excessive user of the roads from the person liable under the said Act to recover such expenses, is not within any of the classes of action enumerated in Order XI., r. 1, and consequently where the person sought to be charged in an intended action under the said Act is resident out of the jurisdiction, leave of the Court to issue and serve a writ of summons out of the jurisdiction will not be allowed. So held by Holmes and Cherry L.JJ., affirming the decision of the K. B. D., diss. the Lord Chancellor. *CLARE C. C. v. ADAM WILSON & SONS - C. A. (Ir.)* [1913] 2 I. R. 89

*Substituted service—Foreign defendant resident out of jurisdiction—Writ—R. S. C., Order XI., r. 6.*

Appeal from Rowlatt J. at chambers.

The deft. was an Italian subject who for some years and up to Sept. 16, 1912, resided in England. Since Aug., 1911, the deft. had carried on business in London in premises which he leased from the plt. On Sept. 16, 1912, he returned to Italy and remained there until Jan. 16. On Oct. 15, 1912, the plt. issued a writ in the K. B. D. against the deft., claiming possession of the premises and damages for breach of covenant. On Dec. 18, on the application of the plt., the following order was made at chambers by Bucknill J. : "It is ordered that the plaintiff be at liberty to issue a concurrent writ of summons against the defendant, Pietro Necchi, for service in the kingdom of Italy; and it is further ordered that service of a copy of this order and of a copy of the said concurrent writ by sending the same by a prepaid

**SERVICE (Jurisdiction, Service out of)—**  
*continued.*

post letter addressed to the said defendant at the offices of his solicitors, Messrs. Freeman & Son, No. 23, Bedford Row, London, W., and also to Messrs. Freeman & Son, at the same address, shall be good and sufficient service of the said writ, and that the time for appearance to the said writ by the said defendant, Pietro Necchi, be within twenty days after the service of the said writ in manner aforesaid." On Jan. 14, no appearance having been entered on behalf of the deft., the plt. signed judgment.

On Jan. 24 the deft. took out a summons for an order that the order of Dec. 18 and all subsequent proceedings be set aside for irregularity on the ground that the deft. was not a British subject and was not within the British dominions at the date of the order or service thereof.

It appeared from an affidavit of the deft. that a letter containing a copy of the writ and of the order for substituted service was delivered at his home in Italy on Jan. 3, but that owing to his absence from home on business he did not receive the letter till Jan. 10, when he at once made arrangements to return to England to instruct his solicitors to defend the action, and that he arrived in England on Jan. 16.

Rowlatt J. refused to set aside the order of Dec. 18. The deft. appealed. The Court (Farwell and Kennedy L.JJ.) allowed the appeal.

Farwell L.J. said that the first part of the order of Dec. 18 was not in the ordinary or proper form and could not be supported. The deft. was a foreigner not resident within the jurisdiction, and under Order XI., r. 6, the proper form of order was to give leave to serve, not the writ itself, but notice of the writ, upon the deft. The first part of the order being bad, it followed that the second part, which gave leave for substituted service, was also bad. The order of Dec. 18 and all the subsequent proceedings founded thereon must be set aside.

Appeal allowed. *KEMP v. NECCHI - C. A. [1913] W. N. 62*

**Justices.**

— Case stated—Non-service of notice of appeal and case on respondents—Impossibility—Jurisdiction to hear case.  
*See JUSTICES—Case Stated.*

**SET-OFF.**

*Assignment, col. 568.*

*Building Society, col. 569.*

*Lease, col. 570.*

**Assignment.**

*Assignees from receivers of a company not in liquidation—Contracts by the debtors with the company—Right of set-off in respect of damages for breach—Appeal from Ontario.*

The respondents sued as assignees from the receivers appointed in a debenture-holders' action of a co. not in liquidation to recover the price of

**SET-OFF (Assignment)—continued.**

goods supplied by the receivers to the appellants under contracts with the co. subsisting at their appointment, but subsequently declared by them to be cancelled. The appellants claimed to set off against the price sued for damages for the breach of the said contracts :—

*Held*, that they were entitled so to do. The amount sued for was due under the old contracts with the co. which was responsible for the breach, and not under new contracts with the receivers. In the absence of a liquidation the persona of the contracting co. remained legally intact as well as its contracts, though controlled by the receivers, who continued and managed its business as officers of Court and had taken no steps to determine the relations between the co. and the appellants. **PARSONS v. SOVEREIGN BANK OF CANADA** - P. C. [1913] A. C. 160; 82 L. J. (P. C.) 60; 20 Mans. 94

**Assignment by one party — Right of other party to set off against assignee.**

The defts., who were tenants of an exhibition ground, entered into a contract with C. by which C. undertook to equip part of the ground and was to receive half of certain takings. C. was also to pay part of the cost of advertising, and if the defts. had to pay any part of C.'s share thereof they were to have a lien on his share of the receipts for admission, but this lien was not to operate until payment of a mortgage by which C. mortgaged to the plts. his share in the profits. The defts. were also to supply C. with electricity, for which he was to pay, the accounts to be rendered weekly. On a motion by the plts. to restrain the defts. from parting with moneys received for admission the defts. claimed to set off from the share of receipts due to the plts. as C.'s mortgagees money due from C. to the defts. for electricity :—

*Held*, that although as a general principle a claim arising under the same contract might be set off against an assignee of a party thereto, yet as the defts. recognized the mortgage as part of the venture, and as the lien was not to operate till after the discharge of the mortgage, the defts. had no right of set-off against the plts. until after its discharge.

Decision of Warrington J. affirmed. **PHOENIX ASSURANCE Co., Ltd. v. EARL'S COURT, Ltd.**

C. A. 30 T. L. R. 50

— Auctioneer—Debt due from owner to purchaser.

See AUCTIONEER.

**Building Society.**

*Banking business — Ultra vires — Premises occupied by customer of society — Set-off of balance on current account against claim for rent.*

The deft. occupied offices belonging to the plt. society, and he was also a customer of the plts. in the banking business carried on by them. The plt. society went into liquidation in June, 1911, and at that time there was rent for two quarters due by the deft. for the offices occupied by him. An arrangement was made in Sept., 1911, by the liquidator of the plt. society and the deft. for a set-off, against the amount of rent due, of 38l. 3s. 3d., the amount of the dividends

**SET-OFF (Building Society)—continued.**

in the liquidation to which the deft. was entitled on his current account. In Nov., 1911, it was decided by the High Court that the banking business carried on by the plt. society was ultra vires, and that consequently none of their customers could rely on any legal liability on the part of the society towards them. After this decision the official receiver refused to allow any set-off against the rent due from the deft. and sued for the full amount. The deft. set up the arrangement of Sept., 1911, as a defence. The county court judge held that there was no consideration for an agreement by way of set-off, since by the decision of Nov., 1911, there was no debt due from the plt. society to the deft. at the time the arrangement was made :—

*Held*, that the decision of the county court judge was right. **BIRKBECK BUILDING SOCIETY v. BIRKBECK** Div. Ct. 29 T. L. R. 219

**Lease.**

*Claim by tenant against lessor for damages for breach of contract — Mortgage of reversion — Notice to mortgagor of tenant's claim — Action by mortgagee for rent — Right of tenant to set off damages claimed from lessor.*

A building co. entered into an agreement with the deft. to build and complete an hotel upon a certain site by a certain date, and the deft. thereby agreed to accept a lease of it for a term of twenty-eight years at a certain rent, as soon as it was ready for occupation. The co. were in default in not having the hotel completed until a much later date than that stipulated, and on that later date the deft. accepted a lease for the agreed term. Shortly afterwards the co., who were holders of a head lease for ninety-nine years from the freeholder, mortgaged their head lease to the plts. An action having been brought by the plts. as mortgagees of the head lease against the deft. for rent accrued due since the date of the mortgage, the deft. sought to set off a claim for damages for the default of the co. in not having the hotel ready by the stipulated time, alleging that the plts. took the mortgage with notice of that claim :—

*Held*, that the rule of equity, that to an action by an assignee of a chose in action the deft. may set off a claim for damages against the assignor directly arising out of the same transaction as the subject-matter of the assignment, has no application to the assignment of a reversion expectant on the termination of a lease; and that the set-off could not be allowed. **REEVES v. POPE - Bankes J.** [1913] 1 K. B. 637; 82 L. J. (K. B.) 44; 108 L. T. 515; [1913] W. N. 66

— Mortgagee—Action by—Claim by tenant for damages.

See above, Lease.

**SETTING ASIDE**—Specific question submitted to arbitrator—Award—Error in law—Application to set aside.  
See ARBITRATION.

**SETTLED ESTATE.**

See SETTLED LAND.

**SETTLED LAND.**

*Administration.* See ADMINISTRATION.

*Capital or Income, cbl.* 571.

*Conversion* See CONVERSION.

*Costs, col.* 573.

*Estate Duty.* See REVENUE.

*Expenses.* See SCOTTISH LAW.

*Improvements, col.* 574.

*Leasehold House, col.* 576.

*Leasing, Power of, col.* 577.

*Merger.* See MERGER.

*Partition Action.* See PARTITION.

*Sale, Power of.* See below, Trustees.

*Settlement.* See SETTLEMENT

*Tenant for Life and Remainderman, col.* 577.

*Trustees, col.* 577.

**Administration.**

— Life tenant of residue — Debts — Legacies — Estate duty — Legacy duty — Adjustment of accounts between tenant for life and remainderman.

See ADMINISTRATION.

**Capital or Income.**

*Equitable tenant for life — Lease — Stone quarries — Covenant to fill up — Compensation for breach — Casual profit.*

C. D. T., who died in 1891, by his will appointed the plts. executors and trustees, and devised his residuary real estate upon trust to pay the net rents and profits thereof, including the produce of mines and quarries, to or permit the same to be received by the deft. T. B. D. and after the death of the deft. upon the trusts in the will mentioned. The testator gave the trustees powers of managing real estate and of determining what part of the produce of mines and quarries should be applied as capital or income.

By lease dated Feb. 7, 1898, which lease was determined on June 12, 1912, the deft. as tenant for life under the Settled Land Act, 1882, demised to lessees a quarry, part of the real estate. The lessees covenanted that when part of the quarry was exhausted they would fill it up fit for agricultural purposes "under a penalty to be recovered as rent in arrear or as liquidated damages by the lessor of 150*l.* an acre." The lessees left 2*s.* 3*d.* 5*d.* uncovered in breach of their covenant, and arranged to pay at the rate of 150*l.* per acre in respect of this land a sum amounting to 416*l.* 6*s.* 10*d.*, which sum had been paid to the deft. On a summons by the trustees asking whether the deft. was entitled to retain all or any part of such sum or whether it should be held by them as capital:—

*Held*, following *In re Lacon's Settlement, Lacon v. Lacon* [1911] 2 Ch. 17, that the deft. was entitled to retain such sum. *In re DEALTRY, DAVENPORT v. DEALTRY* — Eve J. [1913] 1 Ch. 232; [1913] 4 W. N. 138

*Power contained in settlement to grant mining leases — Lease granted by tenant for life under the powers conferred by the Settled Land Acts — Rents*

**SETTLED LAND (Capital or Income)—contd.**

*of mining leases to be set aside as capital money — "Contrary intention" — Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 11.*

Under s. 11 of the Settled Land Act, 1882, a portion of the rents of a mining lease are to be set aside as capital money unless a contrary intention appears in the settlement. If a contrary intention appears in the settlement s. 11 is excluded, although the tenant for life grants the mining lease under the Act and not under the power contained in the settlement. *In re RAYER, RAYER v. RAYER* — Neville J. [1913] 2 Ch. 210; 82 L. J. (Ch.) 461; 109 L. T. 306; 57 S. J. 663

*Settled estate — Will — Construction — Tenant in fee with executory gift over — Unimpeachable for waste — Mining lease — Rents and royalties — "Contrary intention" expressed in settlement — Quality of estate — Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 6, 11; s. 58, sub-s. 1 (ii.).*

A tenant in fee simple in possession of real estates, with an executory gift over, is not impeachable for waste.

*Turner v. Wright* (1860) 2 D. F. & J. 234, followed.

By his will the testator bequeathed and devised to his wife the whole of his real and personal estate absolutely "in full confidence that she will make such use of it as I should have made myself, and that at her death she will devise it to such one or more of my nieces as she may think fit, and in default of any disposition thereof by her will or testament I hereby direct that all my estate and property acquired by her under this my will shall, at her death, be equally divided among the surviving said nieces."

The H. L. decided (*Comiskey v. Bowring-Hanbury* [1905] A. C. 84) that there was an absolute gift of the testator's real and personal estate to his wife, subject to an executory gift over at her death.

Upon an application by the widow (who had married again) to ascertain whether she was entitled to the whole of the mining rents and royalties in respect of mining leases granted under the powers of the Settled Land Acts:—

*Held*, that there was in the will a sufficient expression of a "contrary intention" to exclude the operation of s. 11 of the Settled Land Act, 1882, and there was no obligation upon the applicant to set aside as capital any part of the rents, royalties, and profits, under mining leases, pursuant to that section.

The quality of the applicant's estate could not, of itself, be treated as amounting to the expression of a "contrary intention" in the settlement. *In re HANBURY'S SETTLED ESTATES*

— Eve J. [1913] 2 Ch. 357; 82 L. J. (Ch.) 428; 109 L. T. 358; [1913] W. N. 210; 29 T. L. R. 621; 57 S. J. 646

*Tenant for life and remainderman — Preference shares — Cumulative preferential dividend — Arrears — Death of life tenant — Future dividends — Apportionment.*

Where preference shares carrying a fixed cumulative preferential dividend are bequeathed in trust for a life tenant and remaindermen, and no dividend is declared or paid for the financial

**SETTLED LAND (Capital or Income)—*contd.***

years including the life tenancy, the life tenant's executors are not entitled to have the arrears made good out of future preferential dividends.

*In re Taylor's Trusts* [1905] 1 Ch. 734, and *In re Armitage* [1893] 3 Ch. 337, followed and applied.

*In re Griffith* (1879) 12 Ch. D. 655, and *Bulkeley v. Stephens* [1896] 2 Ch. 241, distinguished. *In re SALE. NISBET v. PHILP*

Astbury J. [1913] 2 Ch. 697; [1913] W. N. 308

**Conversion.**

— Will—Trust for conversion—Power to postpone—Residue—Estate *pur autre vie*—Policies on life of *cestui que vie*—Premiums, whether payable out of capital.

See CONVERSION.

**Costs.**

*Lands Clauses Acts—Purchase by railway company under compulsory powers—Payment into Court of purchase-money—Petition for payment out by trustees for purposes of Settled Land Acts—Separate appearance of tenant for life—Costs—Practice—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 80.*

On a petition by the three trustees of a will who were also trustees for the purposes of the Settled Land Acts, and one of them a tenant for life of one moiety as well of the settled estate, for payment out of money paid into Court in respect of the purchase-money of land forming part of the settled estate taken by a ry. co. under its compulsory powers, the tenant for life of the other moiety and the two remaindermen who appeared by one counsel were held to be properly made respondents and their costs were ordered to be paid by the ry. co. under s. 80 of the Lands Clauses Consolidation Act, 1845. *In re PIGGIN. Ex parte MANSFIELD RY. CO.*

Warrington J. [1913] 2 Ch. 326; 82 L. J. (Ch.) 431; 108 L. T. 1014; [1913] W. N. 198

*Proceedings proposed to be taken for the recovery of land—Benefit to estate—Proceedings abandoned—Costs paid by tenant-for-life—Right to be recouped out of capital—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 36.*

This was an originating summons taken out by the plt. as a trustee of an indenture of settlement against Dora Emma Wilkie, the present tenant for life in possession, and also the administratrix and sole next of kin of Lewis George, the former tenant for life, and Thomas George, one of the persons contingently entitled in remainder, raising the question whether Dora Emma Wilkie was entitled to be recouped out of the capital of the Abercarn Fawr estate comprised in the settlement a sum of 260l. 19s. 4d., paid for costs incurred by the plt., at the request of Lewis George and Dora Emma Wilkie, in obtaining advice and taking proceedings for the purpose of recovering possession of the site of a reservoir adjoining and at one time forming part of the Abercarn Fawr estate, but sold to a ry. and canal co. by a predecessor in title of the settlor, subject to a statutory provision for C.C.D.

**SETTLED LAND (Costs)—*continued.***

resumption of possession in the event of such reservoir being disused, and part of which site had since been acquired from the successors in title of such co. by the plt. as trustee of the said settlement by way of exchange.

Acting under the opinion of counsel the proposed proceedings for the recovery of the land had not been taken, but it was not in dispute that the exchange which had been made was beneficial to the settled land.

The question was whether the Court could now allow the costs of the proceedings, as "proceedings proposed to be taken for recovery of land being or alleged to be subject to a settlement," under s. 36 of the Settled Land Act, 1882.

Sargant J. held that, under s. 26, the Court had power to direct payment out of capital of the costs of proceedings once proposed to be taken, notwithstanding that the application to allow them was made after payment and at a date when the proceedings were no longer proposed to be taken. The bill of costs was accordingly referred to the taxing Master for moderation, and it was declared that Dora Emma Wilkie was entitled to be recouped out of capital the amount of such costs as moderated. *In re WILKIE'S SETTLEMENT. WADE v. WILKIE*

Sargant J. [1913] W. N. 298; [1914] 1 Ch. 77; 58 S. J. 138

**Estate Duty.**

See REVENUE.

**Expenses.**

— Liferent.

See SCOTTISH LAW.

**Improvements.**

*Capital money—Authorized improvement—Necessary ancillary improvement—Conversion of land into building land—Estate office—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 25.*

The life-tenant in possession of settled estates proposed to convert a large piece of vacant land at Camberwell into building land, and in connection therewith it was absolutely necessary to have a small estate office in which the estate agent could keep his accounts and superintend the work.

No house on the rest of the estate being available, it was proposed to build a small office for daily use and not for residence, at a cost of 200l.

The office was not to be built on the vacant land, but upon a convenient site near, which was useless for other purposes.

When built it would last about 200 years and be of permanent value to the estate.

Having duly submitted a scheme for the proposed office to the trustees, the life-tenant now asked that the cost might be allowed out of capital.

He contended that it was clearly authorized by the opening words of s. 25 of the Settled Land Act, 1882, as an "operation incident to or necessary or proper . . . for securing the full benefit of any of those works or purposes," i.e., for securing the full benefit of the conversion

**SETTLED LAND (Improvements)—continued.**

of the vacant land into building land, an improvement directly authorized by clauses 17 and 18.

The life-tenant in remainder and the trustees supported the application.

Astbury J., after referring to *In re Mundy and Roper's Contract* [1899] 1 Ch. 275, 289, and pointing out that in *In re Houghton Estate* (1885) 30 Ch. D. 102, and *In re Lord Gerard's Settled Estate* [1893] 3 Ch. 252, the present point did not arise, and that it was not necessary in the present case to consider, *In re Earl De La Warr's Settled Estates* [1911] W. N. 171, and *In re Orwell Park Estate* (1904), 48 S. J. 193, held that as it was proper to do the necessary works under clauses 17 and 18, to convert the vacant land into building land, it was obviously necessary for securing the full benefit of that conversion that the estate agent should have an office in which he could keep accounts and superintend the work. An expenditure not exceeding 250*l.* would therefore be sanctioned. *In re DE Crespigny's Settled Estates* Astbury J. [1913] W. N. 374

*Collieries—Works required by Coal Mines Act, 1911—Payment out of capital—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 25, sub-ss. xix., xx.*

Upon a summons by a person having the powers of a tenant for life under the Settled Land Acts, asking that capital money under the Acts might be applied in payment of the cost of certain alterations of, and additions to, freehold and leasehold collieries (part of the settled land), required by the provisions of the Coal Mines Act, 1911:—

Held, that the works required were "improvements" within the meaning of s. 25, sub-ss. xix. and xx., of the Settled Land Act, 1882, and that the applicant was *prima facie* entitled to have them paid for out of capital; and the Court, in the exercise of its discretion, made the order.

The words "other preliminary works necessary or proper in connexion with the development of mines" in sub-s. xix., though pointing primarily to operations incident to discovering whether minerals exist under the settled land, and to the procedure necessary or proper to enable the minerals, when their existence is proved, to be reached and worked, include also works (though not enlargements, improvements, or reconstructions within sub-s. xx.) which in the progress of working become necessary or proper for the development of a mine, "development" continuing so long as any part of the mining area remains to be opened up.

Construction of sub-ss. xix. and xx. by North J. in *In re Mundy's Settled Estates* [1891] 1 Ch. 399, adopted and applied. *In re HANBURY'S SETTLED ESTATES* - Eve J. [1913] 1 Ch. 50; 82 L. J. (Ch.) 34; 107 L. T. 676

*Development of building estate—Determination of tenancy of farm required for scheme—Tenant right—Agricultural improvements—Compensation—Capital money—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 21, sub-ss. vii., x.; s. 25, sub-ss. xviii., xviii.; s. 26.*

Settled land was about to be developed as a building estate, and as a necessary preliminary

**SETTLED LAND (Improvements)—continued.**

to carrying out the approved scheme of improvements authorized by the Settled Land Act, 1882, it was essential to obtain vacant possession of a farm let to a yearly tenant, and forming an important part of the settled land in question. The tenancy was determined by notice and compensation was awarded to the tenant in respect of tenant right and improvements not coming within the First or Second Schedules to the Agricultural Holdings Act, 1908:—

Held, that neither under s. 21, sub-ss. iii. or x., nor under s. 25 of the Settled Land Act, 1882, could payment of the compensation in question be allowed out of capital moneys in the hands of the trustees, and that to allow such an expenditure out of capital moneys would be entirely inconsistent with the whole purpose and scheme of the Settled Land Acts.

Decision of Joyce J. (1912) 107 L. T. 141, affirmed. *In re EARL DE LA WARR'S COODEN BEACH SETTLED ESTATE* - C. A. [1913] 2 Ch. 142; 82 L. J. (Ch.) 174; 107 L. T. 671; [1913] W. N. 248; 29 T. L. R. 30; 57 S. J. 42

**Leasehold House.**

*Specific bequest—Rent and outgoings to be paid out of general estate—Sale by life tenant—Ordinary application of proceeds—Additional allowance out of general estate in respect of rent and outgoings—Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 34, 51.*

A testator bequeathed a leasehold house to his executors and trustees in trust to permit his wife to occupy the same during her widowhood, with a provision for payment of ground rent, rates, taxes and outgoings, execution of repairs, and performance of covenants out of the testator's general estate, it being his intention that his wife should be personally relieved therefrom.

The widow resided in the house for fourteen years from the testator's death, the outgoings, amounting to 160*l.* a year, being paid by the trustees. She then sold the house as life tenant under the Settled Land Act, 1882, and the trustees received the purchase-money:—

Held, that under s. 34 the proceeds of sale must be applied in paying the widow during widowhood such an annuity as would exhaust those proceeds, capital and income, in the remaining eleven years of the lease.

*Askew v. Woodhead* (1880) 14 Ch. D. 27, applied.

Held, also, that the widow was not entitled to be paid 160*l.* a year out of the general estate in lieu of the provision for payment of rent and outgoings, as that provision, being merely an extra benefit conferred on her to enable her to reside in the house, was not a provision tending to induce her to abstain from exercising her statutory power of sale within the meaning of s. 51, and consequently came to an end on the sale.

Observations of Buckley J. in *In re Trenchard, Trenchard v. Trenchard* [1902] 1 Ch. 378, followed.

*In re Trenchard, Ward v. Trenchard* (1900) 16 T. L. R. 525, not followed. *In re SIMPSON, CLARKE v. SIMPSON* - Swinfen Eady J. [1910] 1 Ch. 277; 82 L. J. (Ch.) 169; 108 L. T. 317; [1913] W. N. 25; 57 S. J. 302

**SETTLED LAND—continued.****Leasing, Power of.**

- Mining lease—Unopened mine—Power of trustees to grant leases.  
*See WILL—Trustees.*

- Tenant for life—Statutory powers—Mining lease—Rents and profits—"Contrary intention"—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 11.  
*See above, Capital and Income.*

**Merger.**

- Tenancy for life and freehold reversion—Executory gift over—Conveyance of life estate—Intention—Merger at law and in equity.  
*See MERGER.*

**Partition Action.**

- Infant—Request for sale—Sale for infant's benefit—Conversion.  
*See PARTITION.*

**Sale, Power of.**

*See below, Trustees.*

**Settlement.**

*See SETTLEMENT.*

**Tenant for Life and Remainderman.**

*See above, Capital or Income—Improvements—Leasehold House, and SETTLEMENT.*

**Trustees.**

*Power of appointment—Title—Sale—Compound settlement—Trustees for the purposes of the Settled Land Acts—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 1, 5, 8; s. 38.*

*Appeal from a decision of Eve J., [1913] 4 Ch. 561; [1913] W. N. 127.*

By his will dated June 15, 1891, J. P. appointed trustees, and empowered his wife by deed, will or codicil to appoint, as she might think fit, all or any part of his property of what nature or kind soever, and in default he gave all his freehold estates to the use of his wife and her assigns for her life, with remainder to the use of W. P. G. and his assigns for life, with divers remainders over; and the testator empowered his trustees to sell any part of his freehold estates thereinbefore given. The testator died on Aug. 19, 1891, and by her will dated Dec. 5, 1891, his widow appointed W. P. G. her sole executor, and in exercise of the aforesaid power of appointment appointed the real estate devised by her husband's will to the use of W. P. G. and his assigns for life, without impeachment of waste, with remainders over. The testatrix died on Feb. 25, 1892, and on July 2, 1912, W. P. G., in exercise of his powers as tenant for life in possession, contracted to sell part of the settled estates.

The purchaser raised the objection that there being no trustees for the purposes of the Settled Land Acts, the vendor had not shown a good title. Upon a vendor and purchaser summons Eve J. held that there was a continuing power

**SETTLED LAND (Trustees)—continued.**

of sale in the trustees of J. P.'s will, and no further appointment of trustees was necessary.

The purchaser appealed.

The C. A. allowed the appeal. They held that the general power of appointment having been fully exercised by the widow, there was a re-settlement of the estate, and there being no existing interests or charges having priority over that re-settlement, the original settlement created by the testator's will was at an end, and consequently there were no trustees having a power of sale. *In re GORDON & ADAMS' CONTRACT. In re PRITCHARD'S SETTLED ESTATE. - C. A. [1913] W. N. 317; 58 S. J. 67*

*Tenant for life sole trustee—Trustee for purposes of Settled Land Acts—Will—Construction—Future trust for sale—Sole trustee—Power to give discharge—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 39, sub-s. (i.)—Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16, sub-s. (ii.).*

By his will, dated Jan. 9, 1878, a testator appointed his brother and sister to be executors and trustees, and declared that all trusts and powers thereafter vested in his trustees might be exercised by the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of his will. He then devised and bequeathed all his real estate to his trustees upon trust to let the same and to stand possessed of the rents and income arising from such real estate for his nephew, the applicant, for life, and after his decease, in case there should be any children of his living at his decease, upon trust to sell and convert the real estate and stand possessed of the proceeds of sale upon trust for the children of the applicant in manner therein mentioned, and in case there should be no children of the applicant living at his decease, then the testator gave his real estate, messuages, and lands to his brother and sister absolutely.

The testator died on April 28, 1880. In 1884 the applicant purchased from the executors and trustees all their contingent reversionary estate and interest under the will in the real estate of the testator. On Dec. 27, 1888, the applicant was appointed a trustee of the testator's will, and was now the sole surviving trustee under the testator's will, as well as tenant for life of the settled property. There was no one living, except himself, interested in the settled property. The applicant was desirous of selling part of the settled estate, and on April 7, 1913, took out an ex parte originating summons asking (i.) whether as trustee for the time being of the said will he was a trustee under such will for the purposes of the Settled Land Acts, 1882—1890; (ii.) whether, upon the true construction of the will, a sole trustee under such will, for the purposes of the said Acts, was entitled to receive and give a good discharge for the purchase-moneys of any part of the estate which might be sold by the tenant for life.

Eve J. held that the applicant was a trustee of the settlement for the purposes of the Settled Land Acts. The Court would not itself make such an appointment: *In re Davies and Kent's Contract* [1910] 2 Ch. 35, 50; but there was nothing in the Settled Land Acts or in the

**SETTLED LAND (Trustees)—continued.**

authorities which made the position of the applicant illegal. As to the other question the applicant, as such trustee, was entitled to receive and give a discharge for the purchase-money, and it was not necessary that an additional trustee should be appointed under the Acts.

*In re Garnett Orme and Hargreave's Contract* (1883) 25 Ch. D. 595, followed. *In re JOHNSON'S SETTLED ESTATE* - Eve J. [1913] W. N. 222; 57 S. J. 717

**SETTLEMENT (POOR LAW).**

See POOR LAW.

**SETTLEMENT (PROPERTY).**

*After-acquired Property.* See below, **Covenant to Settle.**

*Annuity.* See LIMITATIONS, STATUTES OF.

*Appointment,* col. 579.

*Covenant to Settle,* col. 580.

*Estate Duty.* See REVENUE.

*Hotchpot Clause,* col. 582.

*Portions,* col. 583.

*Reversion Duty.* See REVENUE.

*Settled Land.* See SETTLED LAND.

*Settlement Estate Duty.* See REVENUE.

*Trusts,* col. 584.

*Variation.* See DIVORCE.

*Will.* See SETTLED LAND and WILL.

*Words of Limitation,* col. 586.

**After-acquired Property.**

See below, **Covenant to Settle.**

**Annuity.**

See LIMITATIONS, STATUTES OF.

**Appointment.**

*Protected life interest—Power of appointment amongst children—Advancement clause—Appointed shares—Whether advances to appointees valid—Release of life interest in advances—Whether life interest forfeited.*

By a marriage settlement made in 1865 the income of the wife's fortune was settled upon trust, as to part thereof for the wife for life, and as to the other part thereof for the husband for life or until bankruptcy or alienation or his doing some act whereby the same or some part thereof would become vested in or payable to some other person. Subject to the trusts aforesaid the husband's and wife's fortunes were settled upon trust (in the events which happened) for their children in such shares "and with such provisions for their respective maintenance, education, and advancement" as the husband and wife should by deed jointly appoint, and in default of such appointment for the children equally at twenty-one or marriage. Then followed the usual advancement clause.

In 1896 the husband and wife by deed appointed one equal ninth share of the trust funds to a son on his marriage and the appointed

**SETTLEMENT (PROPERTY) (Appointment)—continued.**

share was settled, and in 1897 they by deed appointed another equal ninth share to another son on his marriage and the appointed share was settled. Neither of these appointments contained an advancement clause. Subsequently the trustees of the 1865 settlement in exercise of their power of advancement raised 4000*l.* out of their trust funds in respect of each appointed share and paid the same to each of the son's marriage settlement trustees, and the husband and wife released their respective life interests in each of the sums so advanced:—

*Held,* that the appointments must be read into the original settlement and that the advancement clause applied to appointed as well as to unappointed shares.

*M'Mahon v. Gausson* [1896] 1 I. R. 143, approved and followed.

*Held,* also, that the husband by releasing his life interest in the sums advanced did not thereby forfeit his life interest under the settlement.

*In re HODGSON. WESTON v. HODGSON*  
*Neville J.* [1913] 1 Ch. 34; 82 L. J. (Ch.) 31; 107 L. T. 607; 57 S. J. 112

**Covenant to Settle.**

*Acquisition of property—Effect of covenant in equity—Persons within marriage consideration—Non-assignment of property—Remedies of trustees—Lapse of time—Statute of Limitation—Marriage settlement.*

A marriage settlement of 1859 contained the usual covenant by the husband and wife to settle the wife's after-acquired property of the value of 100*l.* or upwards.

In 1879 the wife received 285*l.* and paid it into her husband's banking account, on which she had power to draw. Part of it was shortly after invested in two bearer bonds which remained at the bank till the husband's death in 1909 and were now in his executor's possession:—

*Held,* that the moment the wife received the 285*l.* it was specifically bound by the covenant and was consequently subject in equity to a trust enforceable in favour of all persons within the marriage consideration, and therefore, notwithstanding the lapse of time, the trustees were entitled on behalf of those persons to follow and claim the bonds as trust property, though their legal remedy on the covenant was statute-barred.

Principles stated in *Smith v. Lucas* (1881), 18 Ch. D. 531, 543; *Collyer v. Isaacs* (1881) 19 Ch. D. 342, 351; and *In re D'Angibau* (1880) 15 Ch. D. 223, 242, applied.

*Spickernell v. Hothell*: (1854) Kay, 669, 675, and *In re Plumpton's Marriage Settlement* [1910] 1 Ch. 609, 616, distinguished. *PULLAN v. KOE*  
*Swinfen Eady J.* [1913] 1 Ch. 9; 82 L. J. (Ch.) 37; 107 L. T. 811

*Divorce—Decree nisi—Wife becoming entitled to property between decree nisi and decree absolute—Property, whether caught by covenant.*

By a marriage settlement dated in 1879, it was expressly agreed that if the wife during the then intended coverture, or her husband in her

**SETTLEMENT (PROPERTY) (Covenant to Settle)**

—continued.

right, should at one and the same time and from the same source become entitled to any real or personal property of the value of 200*l.* or upwards, the property should be settled. On Jan. 12, 1911, a decree nisi for the dissolution of the marriage was pronounced. On Jan. 22, 1911, the wife became entitled under her mother's will to certain funds which exceeded in value the amount mentioned in the settlement. On July 24, 1911, the decree nisi was made absolute:—

*Held*, that the funds fell into possession during the coverture contemplated by the settlement and were therefore bound by the covenant to settle after-acquired property.

*Norman v. Villars* (1877) 2 Ex. D. 359, and *Hulse v. Hulse* (1871) L. R. 2 P. & M. 259, followed.

*In re Pearson's Trusts* (1872) 20 W. R. 522; 26 L. T. 393, discussed but not followed. *SINCLAIR v. FELL Warrington J.* [1913] 1 Ch. 155; 82 L. J. (Ch.) 105; 108 L. T. 152; 29 T. L. R. 103; 57 S. J. 145

See below, *Trusts*.

**"Interest in expectancy."**

Appeal from a decision of Neville J., [1913] 2 Ch. 92; [1913] W. N. 161.

A testatrix, by her will dated in 1864, gave a fifth share of her residuary estate to her daughter, W., for life, with remainder to her children, but if she should die without issue (which event happened) "her share to go to her next-of-kin as if she had not been married." In 1865, J., another daughter of the testatrix, married, and by her marriage settlement covenanted that any real or personal property to which she then was entitled from any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. In 1912 W. died without issue, and leaving J. her sole next of kin.

Neville J. held that the interest which J. had at the date of her marriage in the settled share of W. was not a mere spes successionis, but an interest in "expectancy," which was bound by her covenant for the settlement of after-acquired property. From this decision J. appealed.

The C. A. allowed the appeal. *In re MUDGE C. A.* [1913] W. N. 317; 58 S. J. 117

*Tenant in tail—Nature of estate settled—Post-nuptial settlement—Usual clauses in settlement—Hotchpot clause—Cross-remainders—Election.*

By marriage articles, B., the intended husband, being entitled as tenant in tail in remainder to three estates, the Menlo, Waterview, and Puxley estates, covenanted to convey to trustees all real estate to which he was, or during the coverture should become, entitled in fee tail in possession or remainder for all such estate as he could convey therein. It was thereby declared that the trustees should stand seised of all such real estate on trust for B. for life, with remainder to C., the intended wife for life for her separate use without power of anticipation. And it was also declared that, after the said life estates, the trustees should stand seised of all such real estate with remainder to the child or children or remoter

**SETTLEMENT (PROPERTY) (Covenant to Settle)**

—continued.

issue of the said intended marriage, or any or either of them, in such manner as B. should, by the settlement to be made, appoint. And it was further agreed that the settlement should contain all powers, provisions, clauses, and agreements, as are usually inserted in marriage settlements as B. should by the settlement agree to. By post-nuptial settlement B., with the consent of the protector and the concurrence of C., disentailed the Menlo estate and conveyed it to the trustees of the articles on trust after his own life estate to raise a jointure for C., and 2000*l.* for portions for younger children as B. and C. should appoint, and, subject thereto, to the eldest son in tail. In execution of that power B. and C. jointly appointed the 2000*l.* among three children to be raised after the death of the husband, and in priority to the wife's jointure.

By a subsequent disentailing deed B. disentailed the Waterview estate to his own use, and did not re-settle it. By his will he purported to leave it absolutely to C.

B. died without disentailing the Puxley estate, and the next tenant in tail, the eldest son of the marriage, subsequently disentailed.

*Held*, (a) that the articles settled a voidable estate in fee simple in all the estates; that as regards the Menlo estate, the effect of the disentailing deed and re-settlement was to capture the fee-simple of the estate for the trusts of the marriage articles, and that the settlement must be disregarded so far as it was inconsistent with the articles.

(b) That a hotchpot clause and a clause providing for cross-remainders should, in view of the provisions contained in the articles, be read into the articles.

(c) That the attempt in the settlement to give the portions term priority to the wife's life estate and to cut down her life estate to a jointure was void as being inconsistent with the articles.

(d) That the Waterview estate was captured by the articles on the execution of the disentailing deed.

(e) That the Puxley estate was not captured by the articles, the settlor having died without executing a disentailing deed, but that the eldest son, who disentailed, if he elected to take under the settlement and articles, must bring in the Puxley estate as if he had disentailed it to the uses of the articles, and must also bring the value of his tenancy in tail of the Menlo estate into hotchpot. *BLAKE v. BLAKE* — *Barton J.* [1913] 1 I. R. 343

**Estate Duty.**

— Incidence—Duty payable out of settled fund or testator's residue.

See *REVENUE*.

**Hotchpot Clause.**

Construction—Settled funds—Covenant to settle after-acquired property—Trusts by reference.

By a marriage settlement made in 1847, funds belonging to the husband, called "the firstly mentioned trust fund," and a fund belonging to



**SETTLEMENT (PROPERTY) (Hotchpot Clause)**  
—continued.

the wife's father, called "the secondly mentioned trust fund," were settled, subject to life interests in the husband and wife, in trust for such children of the marriage as the husband and wife should jointly appoint, and in default as the wife should appoint, and as to the unappointed part, in trust for the children in equal shares, the sons taking vested interests at twenty-one and the daughters at twenty-one or marriage. Then followed a clause providing that no child, who should "take any part of the said trust funds" under any appointment made by the husband and wife or the survivor of them under the powers thereinbefore given, should take any part of "the said trust funds by virtue of the trusts hereinbefore declared in default of appointment" without bringing his or her share into hotchpot. The settlement also contained a covenant to settle the wife's after-acquired property, which was to be held "upon and for such of the said trusts, intents, and purposes, and under and subject to such of the powers, provisos and agreements as are herein declared, expressed or contained of and concerning the secondly mentioned trust fund, and the income thereof, as shall for the time being be subsisting or capable of being acted upon and exercised." There were seven children of the marriage, and the husband and wife appointed the whole of "the firstly mentioned trust fund" and "the secondly mentioned trust fund" in favour of five of the children. Subsequently two legacies to the wife came in and were caught by the after-acquired property clause. The husband and wife died without making any further appointment:—

*Held*, that the two after-acquired legacies formed an accretion to the two original funds and that the five appointees of those funds could not share in the legacies without bringing the shares appointed to them into hotchpot.

*In re Cavendish* [1912] 1 Ch. 794, distinguished.

Observations on *In re Perkins* (1892) 67 L. T. 743; 41 W. R. 170; *In re North* (1897) 76 L. T. 186; and *In re Marquis of Bristol* [1897] 1 Ch. 946. *In re FRASER. IND v. FRASER*

Sargant J. [1913] 2 Ch. 224; 82 L. J. (Ch.) 406; 108 L. T. 960; 57 S. J. 462

**Portions.**

*Vesting—Younger children—"Eldest or only son"—Younger son becoming eldest after vesting of portion—Right to share in portions fund—Settled estate—Settlement—Construction.*

By a marriage settlement made in 1828 real estate was limited to trustees upon trust to raise portions for the younger children of the marriage, such portions to vest at twenty-one in the case of sons, or, in the case of daughters, at twenty-one or marriage under that age. The settlement further provided that if any of the children for whom portions were intended, being a son or sons, should die under twenty-one, "or should, before attaining such age, become an eldest or only son," then the share in the portions fund of the child so dying, or of the son so becoming an eldest or only son, was to go to the survivors

**SETTLEMENT (PROPERTY) (Portions)—contd.**

or survivor who should live to attain a vested interest therein. G. W., a younger son of the marriage, in whom a share in the portions fund became vested by his attaining twenty-one in his father's lifetime, subsequently became the eldest son by the death of his elder brother in the lifetime of his father:—

*Held* that, according to the true construction of the settlement, G. W. was a younger son for the purpose of participating in the portions fund, the position of the son in the family having to be determined at the moment when his share vested.

*Windham v. Graham* (1826) 1 Russ. 331, followed.

*In re Bayley's Settlement* (1870) L. R. 9 Eq. 491; (1871) 6 Ch. 590, considered. *In re WISE'S SETTLEMENT. SMITH v. WALLER*  
Eve J. [1913] 1 Ch. 41; 82 L. J. (Ch.) 25; 107 L. T. 613

**Reversion Duty.**

— "Purchase" of reversion—Marriage settlement.

*See REVENUE.*

**Settled Land.**

— Power of appointment—Title—Sale—Compound settlement—Trustees.

*See SETTLED LAND—Trustees.*

**Settlement Estate Duty.**

*See REVENUE.*

**Trusts.**

*Marriage settlement—Trust funds supplied by intended wife's father described as being "as and for her portion or fortune"—Failure of express trust in actual events—Resulting trust whether in favour of intended wife or of her father—Express provisions in settlement negating hypothesis of absolute gift to intended wife.*

By settlement executed on the marriage of A.'s daughter, B., with D., A. covenanted to execute to the trustees of the settlement two bonds to secure 3000*l.* each, one to bear interest from its date, the other from A.'s death, both bonds to be payable after his death, "as and for the portion or fortune" of his said daughter. D.'s father, C., thereby also covenanted to execute to the trustees a bond to secure 5000*l.* The trusts were to pay the interest of the three sums, so secured to D. for life, and after his death to B., if then living, for life, in bar of all her claims under A.'s own marriage settlement. Then followed trusts for the issue of the marriage. Power was given to B., if she pre-deceased her husband without issue, to appoint by will 2000*l.*, part of the 3000*l.* secured by A.'s first-mentioned bond, as she might think fit, in which case the residue of that 3000*l.* was not to be payable, but was to enure for A.'s benefit. In default of issue, there was an express ultimate limitation of the second sum of 2000*l.* to A., and of the 5000*l.* to C., and D. was given a general power of appointing 2000*l.*, part of this sum of 5000*l.* B. survived A. and D. for many years. There was no issue of the marriage:—

**SETTLEMENT (PROPERTY) (Trusts)—contd.**

*Held*, that while *Ward v. Dyas* (1835) L. & G. temp. Sugden, 177, and the cases which have followed it are to be treated as unimpeachable authorities, the rule of construction thereby laid down is subject to be rendered inapplicable by a contrary intention shewn by express provisions of the instrument itself, and that there was sufficient in the present settlement to shew that the intention of the parties was that the resulting trust of the first-mentioned 3000*l.*, in the events which happened, was in favour of A. and not of B. *In re DONNELLY'S ESTATE* C. A. (Ir.) [1913] 1 I. R. 177

*Power to appoint money—Will—Trusts referring to settlement trusts—Power to appoint similar sum—Covenant to settle after-acquired property.*

By a settlement, made on the marriage of B., she was empowered to appoint that the trustees of the settlement should raise out of the settled fund any sums not exceeding in the whole 2000*l.* and pay the same to B. for her separate use. The settlement contained a covenant by B. to settle any after-acquired property of the value of 200*l.* or upwards.

The father of B., who died in her lifetime, gave a fourth of his residuary estate in trust for each of his two daughters, and directed his trustees to hold the shares "upon the same trusts and with and subject to the same powers, including the powers of investment, as are in their respective marriage settlements contained with respect to the funds thereby settled."

There were separate settlors, separate funds, and separate sets of trustees:—

*Held*, (1.) that B. was entitled to raise by appointment, out of her share of residue, the sum of 2000*l.*; but (2.) that the 2000*l.* was subject to the covenant as to after-acquired property.

*Trew v. Perpetual Trustee Co.* [1895] A. C. 264; *Hindle v. Taylor* (1855) 5 D. M. & G. 577; *Cooper v. Macdonald* (1873) L. R. 16 Eq. 258, and *Baskett v. Lodge* (1856) 23 Beav. 188, distinguished. *In re BEAUMONT. BRADSHAW v. PACKER* - *Farwell L.J.* [1913] 1 Ch. 325; 82 L. J. (Ch.) 183; 108 L. T. 181; 57 S. J. 283

*Trust for sale—Absolute discretion as to time of sale—Difficulty of realization—Proposed appropriation in specie—Settled share—Unauthorized investments—Jurisdiction of Court.*

Where property is settled on trust for sale as and when the trustees in their absolute discretion think fit, and there is great difficulty in realization, the Court has jurisdiction to sanction an appropriation of the original investments to the shares of the various beneficiaries, including a settled share, although some of the investments appropriated to the settled shares are not authorized by the investment clause.

*In re Brooks* (1897) 76 L. T. 771, followed.

*In re Beverly* [1901] 1 Ch. 681, 688, distinguished. *In re COOKE'S SETTLEMENT. TARRY v. COOKE* - *Asbury J.* [1913] 2 Ch. 661; [1913] W. N. 204; 58 S. J. 67

**SETTLEMENT (PROPERTY)—continued.****Variation.**

— Divorce—No power of appointment in favour of petitioner's future wife and children of future marriage—Interest of child of dissolved marriage. *See* DIVORCE.

**Will.**

— Construction—Tenant in fee with executory gift over—Unimpeachable for waste—Mining lease—Rents and royalties—"Contrary intention" expressed in settlement—Quality of estate. *See* SETTLED LAND.

**Words of Limitation.**

*Equitable estate in freehold and copyhold property—Estate for life of trustee—Personal estate subject to trust for conversion into realty—Absolute Interest—Mode of assurance of capital moneys—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22, sub-s. 5—Construction of settlement.*

By a settlement made in 1908 the settlor (being then entitled for a contingent reversionary equitable estate in fee simple to freehold hereditaments and for a corresponding estate to copyhold hereditaments and investments in personality directed to be held upon the same trusts as capital money arising under the Settled Land Act, 1882, from the freehold hereditaments) granted unto a trustee, first, the freehold and copyhold hereditaments, and secondly the investments, to hold the same as to the freehold hereditaments and investments "to the use of the trustee according to the customs of the several manors of which they are respectively held"; and it was thereby agreed that the trustee, his executors or administrators, or other the trustee or trustees for the time being, should stand possessed of the freehold hereditaments upon trust for the settlor during his life, and after his death upon such trusts in favour of his widow, children, or remoter issue, or the respective husbands or wives of such children, as he should appoint, and subject thereto, in trust for his sons and daughters in tail as therein mentioned, with an ultimate trust for the settlor, his heirs and assigns. The copyhold hereditaments were to be held on corresponding trusts, and the investments were to be applied, first, in discharging an incumbrance created by the settlor, and as to the residue (if any) in the purchase of freehold hereditaments to be assured to the trustee or trustees in fee simple upon the same trusts as were thereby declared of the freehold hereditaments thereby assured. On the death of the trustee in 1913:—

*Held*, that as to the freehold and copyhold hereditaments the trustee took a life interest only, and that the trusts of the settlement came to an end on the death of the trustee.

*Held*, however, that as to the investments no words of limitation appropriate to real estate were necessary to pass an absolute interest to the trustee, s. 22, sub-s. 5, of the Settled Land Act, 1882, having made no alteration in the law in this respect, and that the trusts of the settlement

**SETTLEMENT (PROPERTY) (Words of Limitation)—continued.**

did not come to an end on the death of the trustee.

Words of limitation are unnecessary in disposing of the equitable interest either in personal property subject to a trust for conversion into land or in the prospective proceeds of sale of land which is under a trust for conversion into money. The conveyancer can have regard to either the interest in the existing property or the interest in the property which is ultimately to represent the existing property after conversion; and, if either the existing property or the ultimate property is of the nature of personalty, he can properly deal with the equitable interests in that property without using the word "heirs" or its equivalent "in fee simple." *In re MONCKTON'S SETTLEMENT. MONCKTON v. MONCKTON*

Sargant J. [1913] 2 Ch. 636; 109 L. T. 624; [1913] W. N. 272; 57 S. J. 836

*Limitation to settlor for life with ultimate limitation to his "heir-at-law"—Construction—Marriage settlement—Land—Rule in Shelley's Case.*

By her marriage settlement G. M. D. conveyed certain freehold and copyhold hereditaments to trustees to hold in trust for her during her life for her separate use, and after her death in trust for such person or persons and in such manner as she should by her will appoint, and in default of and until such appointment and so far as no such appointment should extend, "in trust for the heir-at-law of the said G. M. D.":—

*Held*, that the rule in *Shelley's Case* (1581) 1 Rep. 93b, did not apply, and that under the limitations of the settlement G. M. D. took an estate for life; the person who at her death answered the description of her heir-at-law took an estate for life, and there was a resulting trust in favour of G. M. D. as settlor.

*Clerk v. Day* (1594) Cro. Eliz. 313, *Dubber v. Frollope* (1734) Amb. 453, and the dictum of Lindley L.J. in *Evans v. Evans* [1892] 2 Ch. 173, 186, considered. *In re DAVIDSON'S SETTLEMENT, CATTERMOLLE DAVIDSON v. MUNBY*

Warrington J. [1913] 2 Ch. 498; [1913] W. N. 270; 58 S. J. 50

**SEWAGE FARM** — Nuisance — Injunction — Damages.

See LOCAL GOVERNMENT.

**SEWERS.**

See LOCAL GOVERNMENT.

**SEYCHELLES**—Criminal law—Embezzlement—Alleged breach of trust—Evidence—Seychelles Penal Code, s. 216.

The appellant, who was a merchant in the Seychelles Islands, had full power under a deed of maintenance to act for the guardian of two minors in reference to their property, and under this power funds were received and remittances made by the appellant's firm, the advances being sometimes far in excess of the receipts. In 1910 Rs.35,313 became payable to the minors and was credited to the appellant's firm in their bank account, which was overdrawn. The minors' account with the appellant's firm was duly credited and the firm continued to make advances

**SEYCHELLES—continued.**

out of this money. In 1911, at the request of the family council, the appellant gave security for Rs.34,000, and this was accepted. On the same day an information was filed against him under s. 216 of the Seychelles Penal Code for embezzlement. At the trial the books were produced with all the entries in order. The appellant was convicted by the acting chief justice, sitting without a jury, and sentenced to 18 months' hard labour.

*Held*, that though s. 216 of the Seychelles Penal Code was not limited to failure to restore goods or money in forma specifica, but dealt with the wilful appropriation or squandering of the property of another, yet the facts did not, upon any just or legal view of them, warrant a conviction, and therefore the judgment and sentence must be quashed. *LANIER v. REX*

30 T. L. R. 53

**SHARES**—Company.

See COMPANY.

**SHAREHOLDERS**—Company.

See COMPANY.

**SHIPPING.**

*Bill of Lading*, col. 588.

*Charterparty*, col. 593.

*Collision*, col. 601.

*Costs*. See above, *Collision*.

*Docks*. See DOCKS.

*Fire*, col. 610.

*Freight*, col. 611.

*Insurance*. See INSURANCE (MARINE).

*Jurisdiction*, col. 611.

*Jury, Right to Trial by*. See JURY.

"*Passenger Steamer*," col. 612.

*Pilot*, col. 612.

*Port of London*, col. 613.

*Sale of Goods*. See SALE OF GOODS.

*Salvage*, col. 613.

*Seaman*, col. 614.

*Strikes*, col. 616.

*Wages*. See above, *Seaman*.

*Warehousing*. See *Bill of Lading—Freight*.

*Weighing*. See DOCKS.

*Workmen's Compensation*, col. 616.

*Wreck*. See above, *Seaman*.

**Bill of Lading.**

*Arbitration Clause*. See below, *Jurisdiction*.

*Estoppel*, col. 589.

*Exceptions*, col. 589.

*Freight*, col. 591.

*Loading Charges*, col. 592.

*Through Bill of Lading*. See below, *Transshipment*.

*Transshipment*, col. 592.

**SHIPPING (Bill of Lading)—continued.***Arbitration Clause.*

See below, *Jurisdiction.*

*Estoppel.*

"Shipped in apparent good order and condition"—*Incorrect statement—Liability of shipowner—Estoppel.*

MARTINEAUS, LD. v. ROYAL MAIL STEAM PACKET Co., LD. - Scrutton J. 17 Com. Cas. 176; 12 Asp. Mar. Law Cas. 190; 106 L. T. 638; 28 T. L. R. 364; 56 S. J. 445

*Exceptions.*

*Condition exempting ship from responsibility for obliteration or absence of marks — Liability for unmarked goods—Comminatio.*

Bales of jute consigned to various consignees and specifically marked were shipped under bills of lading stating that the bales were received "marked and numbered as per margin," that the number of packages signed for was to be binding on the shipowner unless error or fraud be proved, but that the ship was not to be liable for "obliteration or absence of marks." On the discharge of the ship fourteen bales were missing and eleven bales forming part of the cargo shipped at the port of loading, were not marked as labelled in the bills of lading and could not be identified as belonging to any particular consignment. All the consignees received their full consignments except four, who refused to accept any of the eleven bales. In an action for freight by the shipowner against one of the four consignees, who had received six bales less than his full consignment, the consignee counterclaimed for shortage. The shipowner was willing to account to the four consignees for the value of the fourteen missing bales in proportion to their respective shortages, but claimed that the eleven bales ought to be allocated amongst them in the like proportion:—

*Held*, that, as the shipowner had failed to deliver the full number of bales shipped, he was not entitled to claim that the non-delivery of any of the six bales was due to obliteration or absence of marks, and that he was liable for the full value of the six bales.

*Spence v. Union Marine Insurance Co.* (1868) L. R. 3 C. P. 427, distinguished.

Dictum of Lord Russell of Killowen in *Smurthwaite v. Hannay* [1894] A. C. 494, at p. 505, considered.

Decision of the Second Division of the Court of Session in Scotland, *Tyzack and Branfoot Steamship Co. Ltd. v. Sandeman & Sons*, 1913, S. C. 19, reversed. SANDEMAN & SONS v. TYZACK AND BRANFOOT STEAMSHIP CO., LD.

H. L. (Sc.) [1913] A. C. 680; 109 L. T. 580; [1913] W. N. 235; 29 T. L. R. 694; 57 S. J. 752

*Damage to cargo—Unseaworthiness—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 508.*

Appeal and cross-appeal from an order of the C. A. affirming an order of Bray J. [1912] 1 K. B. 229 (*sub nom. Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co., Ltd.*), withdrawn on the terms agreed upon

**SHIPPING (Bill of Lading)—continued.**

between the parties, NORFOLK and NORTH AMERICAN STEAM SHIPPING CO., LD. v. VIRGINIA CAROLINA CHEMICAL CO.

H. L. (E.) [1912] A. C. 52; 82 L. J. (K. B.) 389

*Exceptions from liability—Fire caused by unseaworthiness—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 502.*

Appeal from the judgment of Scrutton J. in an action tried without a jury, [1913] 1 K. B. 538; [1913] W. N. 45.

The plts. claimed damages for the loss of certain cases of mineral waters shipped under a bill of lading on board the defts.' steamship for carriage from Tréport to London. The bill of lading stated that the goods were shipped in apparent good order and condition and were "to be delivered subject to the exceptions and conditions herein mentioned in the like good order and condition." The exceptions and conditions (so far as material) were (1.) . . . Fire on board, in bulk or craft, or on shore, stranding, and all accidents, loss and damage whatsoever from defects in hull, tackle, apparatus, machinery, boilers, steam and steam navigation, or from perils of the seas . . . or from any act, neglect, or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants or agents of the owners and/or charterers, ashore or afloat, in the management, loading, stowing, discharging or navigation of the ship or other craft or otherwise, the owners and/or charterers being in no way liable for any consequences of the causes before mentioned.

The defts. at Tréport took on board their ship and stowed on her main hatch twenty cases of metallic sodium. The sodium was saturated with petrol. It was insufficiently packed and insecurely stowed, having regard to its dangerous nature if it came in contact with water. The ship started in rough weather; the sodium got displaced from the hatch, and, coming in contact with sea water, caused a series of explosions and fire, as the result of which the ship sank and the plts.' goods were lost.

Scrutton J. found that the ship was unseaworthy at the commencement of the voyage; but, following the decision in *Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co.* [1912] 1 K. B. 229, gave judgment for the plts.

The defts. appealed.

The C. A. allowed the appeal. They held that the exceptions in the bill of lading in the case of *Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co.* were different from the exceptions in the bill of lading in the present case; that the exceptions here were not such as to exclude the protection given to the shipowners by s. 502; and that therefore the defts. were entitled to the protection of that section, which, as decided by the C. A. in the *Virginia Carolina Chemical Co.'s case*, applied, though the fire was caused by a breach of the implied warranty of seaworthiness. They accordingly entered judgment for the defts. INGRAM & ROYLE, LD. v. SERVICES MARITIMES DU TRÉPORT, LD. - C. A. [1913] W. N. 326; 30 T. L. R. 79; 58 S. J. 172

**SHIPPING (Bill of Lading)—continued.**

*Strikes*—*Clause exempting shipowners from liability in certain circumstances.*

A bill of lading contained a clause to the following effect: "If the master reasonably anticipates that delivery will be impeded at the port of delivery by strikes, the master may at any point of the transit, at the risk and expense of the owner of the goods, tranship or land or otherwise dispose of the cargo, or any part thereof, and the same may be reshipped or forwarded, or he may proceed on the voyage with the whole or part of the goods, and discharge the same on the return voyage, or forward them to their destination from another port always subject to the conditions of the forwarding conveyance. . . . If the discharge of the cargo be or threatens to be impeded by absence from whatever cause of facilities of discharge, the master to have liberty at ship's expense, but shipper's risk, to put the whole of the cargo into hulk, lighter. . . . Transhipment of cargo for ports where the ship does not call or for shipowner's purposes to be at shipowner's expense."

The A., owned by the O. S. Co. Ltd. and managed by A. H. and Co., left Adelaide on April 10, 1912, bound to London and Liverpool with a general cargo including 2794 sacks of flour belonging to plts. for delivery in London. The A. arrived at Gravesend at 9.38 A.M. on May 24 (Friday before Whit Sunday), at which time there was a strike throughout the Port of London which would or might have prevented the discharge in London of the cargo in the A. The strike also would or might have prevented the loading of coal on the A. necessary for the working of her refrigerator. The vessel, which had only 100 tons of coal on board, equal to one day's consumption for refrigerator and steaming purposes, required an immediate further supply of coal. There was no way of ascertaining how long the strike would last, and in fact the strike continued till the month of Aug. Under these circumstances the A. proceeded at once to the Hook of Holland, arriving there on May 25, where she took a sufficient quantity of coal on board. Learning that the strike still continued, she proceeded on May 26 towards Liverpool, where she arrived on May 28 and discharged her cargo, including plts.' cargo and other London cargo. As a result of the discharging of the plts.' cargo at Liverpool instead of London, transhipment expenses and dock dues at Liverpool amounting to 30l. 15s. 7d. were paid by the defts. to the Mersey Docks and Harbour Board, and were charged to the plts. by the defts. Of this the plts. had paid 30l. under protest and now sought to recover the said sum:—

*Held*, that the plts. were entitled to succeed, as in the events which happened the expenses were not thrown upon the owners of the goods. **WILES AND CO., LD. v. OCEAN STEAMSHIP CO., LD.**

**Bray J. 12 Asp. Mar. Law Cas. 277; 107 L. T. 825; 57 S. J. 213**

**Freight.**

*Freight payable before delivery*—*Goods placed by shipowner in warehouse to be held for him—No notice given of lien for freight—Right of consignee to delivery upon deposit of freight*

**SHIPPING (Bill of Lading)—continued.**

*with warehouseman—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 493–496.*

Goods were shipped at Antwerp for Southampton under a bill of lading which provided that the shipowner should have a lien for freight, which was to be paid "at destination before delivery," that the goods should be taken from alongside by the consignee as soon as the vessel was ready to discharge, and that otherwise they might be "landed, put into lighters, or stored by the steamer's agent . . . at the expense of the consignee."

The steamer arrived and was ready to discharge, but the consignee did not take delivery or pay the freight. The shipowners placed the goods in a warehouse with written instructions to the warehouseman to hold them for the shipowners and not to deliver them to any one without their written instructions accompanied by their release for freight.

The indorsees of the bill of lading sent it to the warehouseman with the amount due for freight and asked for delivery of the goods, pursuant to s. 495, sub-s. 2, of the Merchant Shipping Act, 1894, but delivery was refused upon the instructions of the shipowners:—

*Held*, that the shipowners had not placed the goods in the warehouse under the provisions of ss. 493–496 of the Merchant Shipping Act, 1894, and that therefore the owners of the goods were not entitled to delivery upon depositing the amount of the freight with the warehouseman under the provisions of sub-s. 2 of s. 495. **DENNIS & SONS, LD. v. CORK STEAMSHIP CO. Scrutton, J. [1913] 2 K. B. 393; 82 L. J. (K. B.) 660; 18 Com. Cas. 177; 108 L. T. 726; [1913] W. N. 140; 29 T. L. R. 489**

**Loading Charges.**

*London clauses—Discharge of ship at riverside wharf.*

**PRODUCE BROKERS' CO., LD. v. FURNESS, WITHEY & CO., LD. Scrutton J. 17 Com. Cas. 165; 12 Asp. Mar. Law Cas. 188; 106 L. T. 636; 28 T. L. R. 329**

**Through Bill of Lading.**

*See below, Transhipment.*

**Transhipment.**

*Through bill of lading—Transhipment into lighter—"At ship's expense and shipper's risk"—Unseaworthiness of lighter—Damage to cargo—Liability of shipowner.*

Certain machinery belonging to the plts. was shipped, under a through bill of lading, on board the defts.' steamship *Galileo* at New York bound for Hull, the voyage being described in the margin of the bill of lading as New York to Norrköping, via Hull. The bill of lading contained the following clause: "To be delivered in like good order and condition at the port of Hull . . . to be thence transhipped at ship's expense and shipper's risk to the port of Norrköping." On arrival of the *Galileo* at Hull the defts. put the goods into a lighter belonging to another co., in order to tranship them to another of

**SHIPPING (Bill of Lading)—continued.**

their vessels for carriage to Norrköping. The lighter sank owing to the fact that she was unseaworthy and the plts.' goods were in consequence damaged:—

*Held*, that the defts. were liable for the loss of the goods while in the lighter as the term "at shipper's risk," applied only to the transit of the goods from Hull to Norrköping and not to the time when the goods were in the lighter, and the terms of the bill of lading other than "at shipper's risk" applied to the goods until they were on the transshipment vessel. *GALILEO (S.S.), OWNERS OF CARGO v. THOMAS WILSON, SONS, & Co., LD.*

C. A. 19 Com. Cas. 44; 30 T. L. R. 86

**Charterparty.**

*Bill of Lading*, col. 593.

*Demurrage*, col. 593.

*Dues*, col. 596.

*Exceptions*, col. 596.

*Failure to Load*, col. 597.

*Freight*, col. 598.

*Ready to Load*, col. 599.

*Redelivery*, col. 599.

*Safe Port*, col. 600.

*Strike Clause*, col. 600.

**Bill of Lading.**

*Assignment—Cesser of shipowners' liability—Submission to arbitration—Injunction to restrain arbitration—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 6.*

*DEN OF AIRLIE STEAMSHIP CO., LD. v. MITSUI & CO., LD. AND BRITISH OIL AND CAKE MILLS, LD.* - C. A. 17 Com. Cas. 117; 12 Asp. Mar. Law Cas. 169; 106 L. T. 451

*Failure to load complete cargo—Unseaworthiness—Deviation to port of refuge—Dead freight—Lien—Unliquidated damages.*

*KISH AND ANOTHER v. TAYLOR, SONS & CO.* - H. L. (E.) [1912] A. C. 604; 81 L. J. (K. B.) 1027; 17 Com. Cas. 355; 12 Asp. Mar. Law Cas. 217; 106 L. T. 900; [1912] W. N. 144; 28 T. L. R. 425; 56 S. J. 518

— Cost of stevedoring.

See SALE OF GOODS.

**Demurrage.**

*Custom of port of Novorossisk—Evidence—Distinction between law and custom.*

A custom is a reasonable and universal rule of action in a locality, followed, not because it is believed to be the general law of the land or because the parties following it have made particular agreements to observe it, but because "it is in effect the common law within that place to which it extends."

Alleged custom of the port of Novorossisk considered.

*Lockwood v. Wood*, 6 Q. B. 50, considered *ANGLO-HELLENIC STEAMSHIP CO., LD. v. LOUIS DREYFUS & CO.*

Scrutton J. 12 Asp. Mar. Law Cas. 291; 108 L. T. 86; 29 T. L. R. 197; 57 S. J. 246

**SHIPPING (Charterparty)—continued.**

*Despatch money—Time saved in loading.*

A charterparty provided in clause 6, that "the entire cargo shall be loaded at the average rate of 500 units per running day of twenty-four consecutive hours (Sundays and non-working holidays excepted) . . . ." Clause 9: "If the ship be longer detained than the time stipulated above, demurrage shall be paid day by day." Clause 24: "The owners agree to pay charterers 10% per day for all time saved in loading." The charterer was entitled to 10½ days for loading the cargo, but only five days were in fact used, the loading being finished at 8 A.M. on Wednesday. The charterer claimed that as the remaining 5½ days (excluding Sundays) would only have expired at 8 P.M. on the following Tuesday, he was entitled to be paid 6½ days' despatch money. The owners admitted liability for 5½ days, but disputed liability for the remaining day as that was a Sunday, and excluded from the lay days:—

*Held*, that there was nothing to defeat the prima facie object and intention of the despatch clause, namely, that the shipowners should pay to the charterer for all time saved to the ship, calculated in the way in which demurrage would be calculated, namely, without taking any account of the lay day exceptions, and that therefore the charterer was entitled to be paid despatch money for the Sunday.

*Laing v. Hollway*, 3 Q. B. D. 437; 47 L. J. (Q. B.) 512; *The Glendevon* [1893] P. 269; 62 L. J. P. 123; *Nelson v. Nelson Line* [1907] 2 K. B. 705; 77 L. J. (K. B.) 97, and *In re Royal Mail Steam Packet Co. and River Plate Steamship Co.*, 15 Com. Cas. 124; [1910] 1 K. B. 600; 79 L. J. (K. B.) 673, considered and discussed. *MAWSON SHIPPING CO., LD. v. BEYER* - *Bailhache J.* 19 Com. Cas. 59; [1913] W. N. 330

**Discharge of cargo.**

The deft. chartered a steamship from the plts., who were the owners, to take a cargo of flour from Hull to London and there deliver the cargo "as ordered, or so near thereto as she may safely get." The charterparty also provided that the cargo was to be discharged in two "weather working" days, and if the vessel was longer delayed demurrage was payable. The charterer ordered the vessel to go to Keen's Wharf in the Thames, but owing to a strike in the port she could not get to the wharf, and was ordered by the harbour master to East-lane Tier, a quarter of a mile away. After seventeen days delay she was taken to Chatham, and there discharged. Strike was not one of the perils excepted in the charterparty. The plts. brought an action against the deft. to recover seventeen days' demurrage:—

*Held*, that East-lane Tier was in the circumstances a place as near to Keen's Wharf as the vessel could safely get, and was a place where the deft. might reasonably be expected to take the cargo or make arrangements for its discharge, and that therefore the plts. were entitled to recover the demurrage claimed. *THE "FOX" THOMAS WALKER & CO. v. HORLOCK* - Div. Ct. 30 T. L. R. 58

**SHIPPING (Charterparty)—continued.**

*Exceptions—Strike—Construction of clause relating to time allowed for discharging.*

A charterparty contained the following clause: "Time to commence when steamer is ready to unload and written notice given, whether in berth or not. In case of strikes, lock-outs, civil commotions, or any other causes or accidents beyond the control of the consignees which prevents or delays the discharging, such time is not to count unless the steamer is already on demurrage":—

*Held*, that the clause did not mean that time was not to count at all if a strike delayed the discharging, but that time should not count to the extent of any delay caused by a strike. **LONDON AND NORTHERN STEAMSHIP CO., LD. v. CENTRAL ARGENTINE RY. LD.** **Scrutton J.** **12 Asp. Mar. Law Cas. 303; 108 L. T. 527**

*Exceptions—Time for loading and discharging—“Strikes . . . or any cause beyond the control of the charter”—Deficiency of railway wagons for taking delivery of cargo.*

A printed clause in a charterparty provided as follows:—"The steamer to be loaded in usual turn, with customary despatch at Goole, and discharged in 36 running hours, commencing first high water on or after arrival at or off the berth, unless berthed before, but time, unless used, not to commence between 6 p.m. and 6 a.m. . . ." On the margin the following clause was written:—"When steamer loads at Hull 72 running hours will be allowed for loading and discharging, which time is to commence when steamer is at or off loading berth, but should steamer be prevented from entering the loading dock owing to congestion, time to commence from first high water after arrival off the dock":—

*Held*, that when the steamer loaded at Hull, the words in the printed clause "time . . . not to commence between 6 p.m. and 6 a.m." did not apply and that the time commenced to count from the time the steamer got to the loading berth.

The charterparty also contained the following exception clause:—"Strikes of workmen, lock-outs, pay days, idle days or cavilling days, or riots, or frost, rain or floods, or any accident or any cause whatsoever beyond the control of the charterer which may prevent or delay her loading or unloading excepted." At the port of discharge there was a delay of 17 hours owing to a deficiency of railway wagons, this being due to the abnormal demands upon the ry. co. at the material time. On a claim for demurrage in respect of the 17 hours:—

*Held*, that the words in the exception clause, "or any cause whatsoever," were sufficiently wide to exclude the ejusdem generis rule of construction; that in the circumstances the charterers came within the exceptions clause and were therefore not liable for demurrage. **FRANCE, FENWICK & CO., LD. v. PHILIP SPACKMAN & SONS** **Bailhache J.** **18 Com. Cas. 52; 12 Asp. Mar. Law Cas. 289; 108 L. T. 371**

*Period of Demurrage not specified—Detention of ship beyond a reasonable time—Damages.*

Where a charterparty provides that if the ship

**SHIPPING (Charterparty)—continued.**

is detained at the port of discharge after the expiry of the lay days demurrage shall be payable at a certain specified rate, but is silent as to the period for which she may be so kept on demurrage, if after the expiry of a reasonable time beyond the lay days the shipowner, instead of landing the goods and taking his ship away, allows her to be further detained, the demurrage rate of compensation will apply to the whole period of detention and not merely to the reasonable time. **WESTERN STEAMSHIP CO. v. AMARAL SUTHERLAND & CO.** **Bray J.** **[1913] 3 K. B. 366; 82 L. J. (K. B.) 1180; 19 Com. Cas. 1; 109 L. T. 217; [1913] W.N. 248; 29 T. L. R. 660; 58 S. J. 14**

**Dues.**

*Charterer to pay all "dues"—Ship to pay all "port charges"—Custom of port of Santos.*

**SOCIETA ANONIMA UNGHERESE DI ARMA-MENTO MARITTIMO v. HAMBURG SOUTH AMERICAN STEAMSHIP CO.** **Hazlilton J.** **17 Com. Cas. 216; 12 Asp. Mar. Law Cas. 228; 106 L. T. 957**

**"Dock dues"—Construction.**

A charterparty provided that, "if the cargo or any part thereof is discharged in one of the docks in the river Thames, each consignee is to pay two-thirds of the dock dues payable in respect of the space occupied by his portion of the cargo to be discharged in such dock:—

*Held*, that this provision meant that all proper charges which could be and were imposed by the dock authority in respect of entrance into and use of the dock by the vessel were included in the words "dock dues," and therefore these words included payments charged by the Port of London Authority as and for rent. **THE "KATHERINE"** **Div. Ct.** **30 T. L. R. 52**

**Exceptions.**

*See above, Demurrage.*

*"Improper opening of valves"—Neglect to close discharge valve—Incurion of sea water—Damage to cargo—Liability of shipowner.*

Under a charterparty the plts. became the charterers of a steamship of which the defts. were owners. By the charterparty the steamship was to proceed to Sulina and there load a cargo of grain and, being so loaded, was to proceed to a port in the United Kingdom or Continent, which in the event was Belfast, with a cargo of grain. The charterparty and bill of lading (of which the plts. were indorsees) for the cargo contained the following exceptions:—"The act of God, perils, dangers, and accidents of the sea or other waters of what nature and kind soever; . . . and all other accidents of navigation, and all losses and damages caused thereby are excepted, even when occasioned by negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowners, but unless stranded, sunk or burnt nothing herein contained shall exempt the shipowner from liability to pay for damage to cargo occasioned by . . . improper opening of valves . . ." The vessel accordingly went to Sulina and proceeded to load a cargo of maize. When the loading of the vessel

**SHIPPING (Charterparty)—continued.**

had proceeded so far that the circulating pump discharge valve became submerged, the engineers negligently omitted to close the discharge valve. They also negligently omitted to close the condenser doors, which had been opened for the purpose of draining the pipes. The consequence was that there was an incursion of water through the open valve and condenser doors into the engine-room and thence into the holds, whereby the cargo was damaged:—

*Held*, that the defts. were not protected by the exceptions from liability for the damage so caused, inasmuch as the words "improper opening of valves" must be construed as including the case of improperly leaving the valves open.

*MENDL & Co. v. ROPNER & Co.* *Bray J.*  
 [1913] 1 K. B. 27; 82 L. J. (K. B.) 75; 18 Com. Cas. 29; 12 Asp. Mar. Law Cas. 268; 107 L. T. 699; 57 S. J. 130

— Strikes.

*Failure to Load.*

*Coal cargo—Notice of readiness to load—Right to cancel—Stoppage at colliery continuing for five days from time of steamer being ready to load.*

By a charterparty dated Feb. 29, 1912, the *Adalands* was to proceed to Hull and there load a complete cargo of coal. No particular colliery was specified. Clause 5 provided that the cargo was to be loaded in 72 running hours, "time to count, when notice of readiness to receive the entire cargo is given to the stevedore or colliery agent or handed in to his office, between the hours of 6 a.m. and noon. The loading date to be not before 6 a.m. on the 7th April, but seven clear days written notice of definite loading date to be given by owners . . ." Clause 6 provided that "the parties hereto mutually exempt each other from all liability (except under the strike rules) arising from or for time lost through riots, strikes, lock-outs of workmen or disputes between masters and men, or by reason of accidents to mines or machinery, obstructions on rys. or in harbours (not including congestion of ships or traffic), or by reason of frosts, floods, fogs, storms, and any unavoidable accidents and hindrances beyond their control, either preventing or delaying the working, loading, or shipping of the said cargo, occurring on or after the date of this charter until the expiration of the loading time. . . . In the event of any stoppage or stoppages arising from any of these causes (other than a 'strike' as defined in the strike rules) continuing for the period of five days from the time of the steamer being ready to load at the colliery or collieries for which she is chartered, this charter shall become null and void, provided, however, that no cargo shall have been shipped on board the vessel previous to such stoppage or stoppages." The shipowners notified the charterers that the vessel would be ready to load on April 22, 1912. On April 16, 1912, the charterers refused to load, as they said they could not get coal from a particular colliery owing to a stoppage at the colliery such as was contemplated by clause 6. On April 19, 1912, the shipowners notified the charterers that the vessel was in Hull ready on that date ready for loading and at their disposal. The charterers not having

**SHIPPING (Charterparty)—continued.**

loaded the cargo on the *Adalands*, the shipowners claimed damages:—

*Held*, (1.) that the five days mentioned in clause 6 must be counted from April 22, although the vessel was in fact ready to load on April 19; and (2.) that the word "stoppage" in clause 6 meant an entire stoppage of work, and that as the charterers had failed on the evidence to shew that there was an entire stoppage which prevented any loading for five days from April 22, they were liable in damages for refusing to load.

*AKTIESELSKABET ADALANDS v. MICHAEL WHITAKER, LD.* *Pickford J.*  
 18 Com. Cas. 229

*Freight.*

*Loss of time—Cesser—"Damage preventing working of vessel"—"Vessel driven into port from accident to cargo"—"Damage to vessel by shifting of deck cargo."*

Award in form of a special case.

A charterparty was made on July 4, 1912, between Messrs. Burrell & Sons, the owners of a steamer called the *Strathdene*, and Messrs. F. Green & Co., as agents for Messrs. Hind, Rolf & Co., the charterers of the steamer. The charterparty provided that the vessel was to be placed at the charterers' disposal; that the hire should be at a sum per calendar month; that the captain should be under the orders and directions of the charterers as regards employment, agency and other arrangements; and that the owners should not be responsible for damage to or claims on cargo caused by bad stowage, the stevedores being employed by the charterers. It also contained the following clause:—"In the event of loss of time from deficiency of men or stores, breakdown of machinery, collision, docking, stranding, or other accident or damage preventing the working of the vessel for more than twenty-four consecutive hours the time lost shall be allowed to the charterers, including first twenty-four hours . . . but should the vessel be driven into port or anchorage by stress of weather or from accident to the cargo such detention or loss of time shall be at the charterers' expense."

The *Strathdene* was loaded by the charterers with a cargo of lumber, including a deck cargo, and sailed from Portland for Japan on Nov. 9, 1912. Four days after starting she encountered very bad weather. The deck cargo shifted and became insecure. On Nov. 16 the vessel's course was altered so as to make for Victoria, British Columbia. On Nov. 19, at 6.38 p.m. she reached that port. There it was found necessary to discharge the deck cargo, to do certain repairs to the ship and to re-stow the cargo, with the result that the vessel was detained for a period of thirty-three days and seventeen hours. Of this time nine days and twelve hours were taken in doing repairs to the ship rendered necessary by the combined effect of stress of weather and the shifting of the deck cargo.

The question was whether this was time lost from "damage preventing the working of the vessel," in which case the time was to be allowed to the charterers, or whether it was time lost from the vessel being "driven into port by stress of weather or from accident to the cargo," in



**SHIPPING (Charterparty)—continued.**

which ease the loss of time was to be at the charterers' expense.

Bailhache J. *held* that the nine days and twelve hours was timelost from damage preventing the working of the vessel, and that the vessel was off hire for that period. **BURRELL & SONS v. F. GREEN & Co.** - [1913] W. N. 330

*Lump sum freight—Loss of ship and part of cargo by excepted peril—Delivery of part of cargo—Right of shipowner to freight.*

Where a ship chartered for a voyage for a lump sum freight, to be paid on unloading and right delivery of the cargo, under a charterparty containing an exception of perils of the seas, is disabled from continuing the voyage, and part of the cargo is lost, through perils of the sea, the shipowners may earn the lump sum freight by forwarding the remainder of the cargo to the port of destination by a substituted ship or other means.

The plts. chartered their ship to the defts. to load a cargo of timber, and carry it to "Port Talbot, a dock as ordered," for a specified lump sum as freight, to be paid on unloading and right delivery of the cargo. The charterparty contained the usual exception of perils of the seas. The ship arrived, with her cargo on board, off Port Talbot, when, owing to heavy weather, she was driven ashore and became a total loss. Part of the cargo was washed ashore, and was afterwards collected on the beach by the directions of the master, and deposited on the dock premises, the remainder being lost by perils of the sea.

In an action for the lump sum freight:—

*Held*, affirming the judgment of Pickford J. [1912] 3 K. B. 321, that the shipowners, having delivered so much of the cargo as they were not excused by the excepted perils for not delivering, had performed their contract and earned the freight, notwithstanding that the ship had not completed the voyage, and that the portion of the cargo delivered had been so delivered otherwise than by the chartered ship. **HARROWING STEAMSHIP CO. v. THOMAS** - C. A. [1913] 2 K. B. 171; 82

L. J. (K. B.) 636; 18 Com. Cas. 197; 12 Asp. Mar. Law Cas. 261; 108 L. T. 622;

[1913] W. N. 90; 29 T. L. R. 365; 57 S. J. 426

**Ready to Load.**

*Maize cargo—Bunker coal stored on deck.*

*Held*, on the evidence, that a steamship was ready to load a cargo of maize, notwithstanding that she had, when tendered to the charterers, a large quantity of coal stored on deck between the bulwarks and the raised hatch coamings, which coal had formed part of the outward cargo and was bought by the shipowner as bunker coal for the homeward voyage. **LONDON TRADERS SHIPPING CO., LD. v. GENERAL MERCANTILE SHIPPING CO., LD.**

**Sutton J. 29 T. L. R. 504**

**Redelivery.**

*Hire—Duration—Whether date for redelivery of the essence of the contract.*

By a charterparty the owners agreed to let and the charterers agreed to hire the *Hugin* for

**SHIPPING (Charterparty)—continued.**

the term from May 15–31, 1912, until Oct. 15–31, 1912. Cl. 5 was as follows:—“The charterers shall pay for the use and hire of the said vessel 615*l.* sterling per calendar month, commencing on and from the date of her delivery as aforesaid, and at and after the same rate for any part of a month; hire to continue from the time specified for terminating the charter until her redelivery to owners (unless lost) at a port on east coast of the United Kingdom, between Oct. 15 and 31, 1912.” On Oct. 18, 1912, the *Hugin*, then at West Hartlepool, was despatched by the charterers on a voyage to St. Petersburg and back. It was impossible for her to perform that voyage and to return in time to be redelivered to the owners at an east coast port by Oct. 31, 1912, and this fact was known to the charterers. The *Hugin* was not in fact redelivered to the owners till Nov. 20, 1912. The owners claimed damages in respect of the period from Oct. 31, 1912, to Nov. 20, 1912, rates having risen since the date of the charterparty:—

*Held* that the charterers committed a breach of the charterparty by not redelivering the *Hugin* on or before Oct. 31, 1912, and that they were therefore liable in damages in respect of the period between that date and Nov. 20 at the current, and not at the chartered, rate. **WATSON STEAMSHIP CO. v. MERRYWEATHER & CO.**

**Atkin J. 18 Com. Cas. 294; 108 L. T. 1031**

**Safe Port.**

A charterparty provided that the ship should “trade between any safe ports between Hamburg and Brest and the United Kingdom.” The ship was ordered by the charterers to go to Craster, a port in the United Kingdom which was perfectly safe to make provided the sea was smooth, but which might become dangerous, if a change of wind altered the conditions. At the time the vessel was ordered to Craster the sea was smooth:—

*Held*, that the port was not a safe port within the meaning of the charterparty. **JOHNSTON BROTHERS v. SAXON QUEEN STEAMSHIP CO.**

**Rowlatt J. 12 Asp. Mar. Law Cas. 305;**

**108 L. T. 564**

**Strike Clause.**

*Charter to be null and void if stoppage arising from strike lasts more than six days—Termination of strike before expiration of six days—Effect of strike continuing beyond the six days—Right of charterer to cancel charter.*

A steamer was chartered to carry a cargo of coal from the Penarth Docks to Buenos Aires. The charterparty provided that “any time lost through riots, strikes, lock-outs, or any disputes between masters and men occasioning a stoppage of pitmen, trimmers, or other hands connected with the working of the delivery of the coal for which the steamer is stemmed . . . or any cause beyond the control of the charterers not to be computed as part of the loading time . . . In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel being ready to load this charter shall become null and void.” The steamer was ready to load in Penarth Dock on April 4, 1912, at

**SHIPPING (Charterparty)—continued.**

1 p.m. At that time the great national strike of colliers of 1912 was in full force, so that no coal arrived at Penarth Dock for shipment. The strike came to an end on April 9, but as certain repairing and clearing-up work had first to be done at the collieries as a consequence of the strike, no coal arrived at Penarth Dock for shipment by the steamer until the morning of April 11, more than six days after she was ready to load. The charterers claimed the right to cancel the charter as the stoppage had continued for six running days from the time the vessel was ready to load :—

*Held*, that the charterers were entitled to cancel the charter, as the stoppage was a stoppage due to the strike, notwithstanding that it had continued two days beyond the time at which the strike itself had come to an end. **GORDON STEAMSHIP CO., LD. v. MOXEY, SAVON & CO., LD.** - *Bailhache J.* 18 Com. Cas. 170; 108 L. T. 808

See above, *Demurrage.*

**Collision.**

*Charterparty*, col. 601.

*Compulsory Pilotage*, col. 602.

*Costs*, col. 603.

*Damage*, col. 603.

*Fog*, col. 604.

*Insurance.* See **INSURANCE (MARINE).**

*International Rules*, col. 604.

*Maritime Conventions Act*, 1911, col. 605.

*Mersey River*, col. 606.

*Particulars.* See **PARTICULARS.**

*Pleading.* See **PARTICULARS.**

*Preliminary Act*, col. 606.

*Sound Signals*, col. 606.

*Steamships Crossing*, col. 607.

*Steamships Turning*, col. 608.

*Thames Custom*, col. 608.

*Thames By-laws*, 1898, col. 609.

*Tug and Tow*, col. 609.

**Charterparty.**

*Sub-charterparty—Loss of freight—Right of sub-charterers to sue for bill of lading freight.*

On appeal from the decision of *Bargrave Deane J.* [1913] P. 54, the C. A. referred it to the registrar to take evidence as to the terms and signatures of the actual bills of lading for the cargo lost, and also as to the circumstances tending to shew who were the actual parties to the contracts for the carriage of the goods in question. **THE "OKEHAMPTON"** C. A. 29 T. L. R. 486

*Time charter—Sub-charter—Bailee—Damage—Claim for bill of lading freight.*

The plts., sub-charterers of a steam vessel which sank with her cargo after collision with the defts.' vessel, sued the defts. for the bill of lading freight which (but for the negligence of those in charge of the defts.' vessel) they would have earned, if the voyage of the chartered vessel

**SHIPPING (Collision)—continued.**

had been completed. *Bargrave Deane J.* disallowed the claim ([1913] P. 54) on the ground that the charterers only used the vessel for the temporary purpose of a defined voyage, and that this voyage was conducted by the master and crew as the servants of the owners with whom the possession of the ship remained. The ship-owners were, therefore, the carriers of the cargo :—

*Held* by the C. A. (*Vaughan Williams L.J.*, *Buckley L.J.*, and *Hamilton L.J.*), reversing the decision of the Court below ([1913] P. 54), that the plts. had a sufficient possessory interest in ship and cargo to entitle them, as bailees, to maintain the action, the evidence, taken by the registrar under an order of the C. A., shewing that the contract of carriage was between the plts. and the shippers of the cargo, the plts. taking delivery of the goods from the shippers, putting them on board, and signing the bills of lading in their own name, and on their own behalf, as principals. **THE "OKEHAMPTON," MACANDREW v. "OKEHAMPTON" (OWNERS)** C. A. [1913] P. 173; 29 T. L. R. 731; 18 Com. Cas. 320

**Compulsory Pilotage.**

*Pilotage Act*, 1913 (2 & 3 Geo. 5, c. 31), is an Act to consolidate and amend the law relating to Pilotage.

*Exemption—Extra coals—“Navigating in ballast”—“Stores”—Trinity House By-law—Order in Council*, July 25, 1861.

**THE "TONGARIRO" - Bargrave Deane J.** [1912] P. 297; 82 L. J. (P.) 22; 12 Asp. Mar. Law Cas. 235; 107 L. T. 28; 28 T. L. R. 336

*Exemption—Putting into the Humber for “stores” only—Bunker coal—2 & 3 Will. 4, c. cv. (Pilotage—Humber) s. 24.*

The defts.' steamship, whilst on a voyage from Great Yarmouth to a Russian port with a cargo of herrings, put into the Humber for the purpose of replenishing her stock of bunker coal, and came into collision with the plts.' trawler. Both vessels were found to blame. The defts. set up a plea of compulsory pilotage :—

*Held*, that the defts. could not escape liability by reason of their vessel being in charge of a duly licensed pilot in a compulsory pilotage district, as the coals were “stores” within the meaning of s. 24 of the local Act 2 & 3 Will. 4, c. cv., by which “any ship or vessel putting into the River Humber for the purpose of shelter or of obtaining stores or provisions only” is exempt from compulsory pilotage. **THE “NICOLAY BELOZWETOW” - Evans P.** [1913] P. 1; 82 L. J. (P.) 37; 12 Asp. Mar. Law Cas. 279; 107 L. T. 862; 29 T. L. R. 460

*Lights—Tug lying by a ship and in attendance on her—Look-out—Sound signals—Compulsory pilot—Proper assistance from crew.*

**THE “ELYSIA” - Evans P.** [1912] P. 1524; 81 L. J. (P.) 104; 12 Asp. Mar. Law Cas. 198; 106 L. T. 896; 28 T. L. R. 376

*River Thames—Thames By-Laws*, 1898 arts. 4, 14—*Meaning of “master”—Look-out—*

**SHIPPING (Collision)—continued.**

*Whistle—Port of London—Compulsory pilotage—General Pilotage Act, 1825 (C Geo. 4, c. 125), s. 54.*

THE "UMSINGA" - C.A. [1912] P. 120 ;  
81 T. J. (P.) 65 ; 12 Asp. Mar. Law Cas. 174 ;  
106 L.T. 222 ; 28 T. L. R. 212 ; 56 S. J. 270

**Costs.**

*Collision—Defence on merits and on compulsory pilotage—Failure of defence on merits.*

The *A.*, which was lying at anchor, was run into during a fog by the *O.* and damaged. In an action against the owners of the *O.* in respect of the damage, the defts. pleaded that the collision, so far as they were concerned, was due to inevitable accident, and that it was not caused or contributed to by anyone on board the *O.*; they also pleaded the defence of compulsory pilotage. At the trial the defts. succeeded on the defence of compulsory pilotage but failed on the other issue, and the judge gave judgment for the defts. without costs :—

*Held*, that the judge had properly exercised his discretion as to costs.

Decision of Bargrave Deane, J. (29 T. L. R. 656), affirmed. THE "OPHELIA" - 30 T. L. R. 61

**Damage.**

*Contributory negligence of plaintiff—Collision in river—Launch and dredger—Consequential damages—Common law or Admiralty action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).*

THE "BLOW BOAT" - Bargrave Deane J. [1912] P. 217 ; 82 L. J. (P.) 24

*Dredger—Loss of use—Period for computation of damages.*

The plts.' dredger was sunk by the defts.' steamship in the entrance to the Swansea Channel on Feb. 4, 1912. She was raised on Sept. 2, 1912, and was ready for use on Feb. 6, 1913. It was impossible, until after she had been raised, to dredge where she was sunk, and a bank was formed by the sand sitting down on her. After she was raised the plts. hired another dredger :—

*Held*, that the plts. were entitled to damages, not merely for the period during which they had hired another dredger, but also for the period during which they had lost the use of their own dredger by reason of the fact that she was sunk. THE "TUGELA" - - - 30 T. L. R. 101

*"Excessive bail"—Cost of bail fees.*

A steamship ran into another moored alongside a wharf in the river Thames, doing damage to the moored vessel and breaking her adrift. The vessel which had been moored did damage to others, after she was broken adrift. In an action for damage brought by the owners of the vessel broken adrift they demanded bail in 10,000*l.*, but ultimately reduced their demand to 9000*l.* The question of liability having been fought and determined in favour of the plts., they filed a claim in the registry amounting to 345*l.* 13*s.* 5*d.* The defts. tendered 3100*l.*, which was accepted by the plts.

On a motion by the defts. that the plts. should bear the cost of the excessive bail fees :—

*Held* that the bail demanded was excessive,

**SHIPPING (Collision)—continued.**

and that the plts. were to bear the cost of the fees for the bail demanded above 6000*l.* THE "PRINCESSE MARIE JOSE" - Bargrave Deane J. 109 L. T. 326 ; [1913] W. N. 248 ; 29 T. L. R. 678.

*Steam trawler sunk—Claim for loss of future fishing.*

The plts.' steam trawler was sunk by collision between it and the defts.' steamship, the latter vessel being alone to blame :—

*Held*, that a claim by the plts. for loss of fishing, till they got a new vessel to replace the one that was sunk, was not maintainable. THE "ANSELMA DE LARRINAGA" Bargrave Deane J. 29 T. L. R. 1587

*Time charter—Vessel sunk while under charter to be still in force for five years—Value of vessel.*

The plts.' vessel, the *Helvetia*, was sunk by collision with the defts.' vessel in July, 1912. The *Helvetia* had a charterparty dated 1909, which was to be in force from the spring of 1911 until 1917, unless the charterers cancelled it for any particular season :—

*Held*, that the value of the *Helvetia* must be ascertained as at the date in 1917 when the charterparty would expire, taking into account all the contingencies and the special terms of the charterparty. THE "EMPEROR OF BRITAIN" - - - Evans P. 29 T. L. R. 423

**Fog.**

*"Moderate" speed—Regulations for Preventing Collisions at Sea, art. 16.*

As a general rule a steam vessel ought not to be going so fast in a fog that those in charge of her cannot pull up within the distance that they can see. THE "COUNSELLOR"

Bargrave Deane J. [1913] P. 70 ;  
82 L. J. (P.) 72

*Vessel moored—Signal—Manchester Ship Canal.*

There is no rule in the Manchester Ship Canal that a vessel moored alongside one of the lie-bys in a fog shall give any signal to indicate her presence as a warning to other vessels ; and the rules of good seamanship do not require her to give a signal in the absence of circumstances shewing that those on board knew, or ought to have known, that another vessel was approaching to moor there. THE "CITY OF LIVERPOOL"

Evans P. 29 T. L. R. 139

**Insurance.**

— Collision clause of Lloyd's policy—Construction of clause—"Collision . . . with ship or vessel"—Collision with nets of shipping vessel.

See INSURANCE (MARINE).

**International Rules.**

*Squadron of warships—Foreign steamship—Attempt to pass through—Board of Trade Notice to Mariners, 1897.*

The plts., who were the owners of a Spanish steamship, brought an action against the officer of the watch on H.M.S. *King Alfred* a British cruiser, to recover damage resulting from a collision. The cruiser was one of a squadron of

**SHIPPING (Collision)—continued.**

five cruisers and followed the leading cruiser. The case for the steamship was that her master regarded the cruiser as the vessel whose duty it was to give way and that he therefore kept his course and speed, in accordance with the International Rules, until the collision was imminent. The deft. contended (*inter alia*) that the steamship was negligent in attempting to pass through the squadron, and he relied upon the "Notice to Mariners" issued by the Board of Trade in 1897, which calls the attention of masters to the danger of attempting to pass through a squadron of warships. The plt's. officers, who were Spaniards, had never heard of this notice, and the deft. knew that the plt's. vessel was Spanish. The deft. stated that he regarded his cruiser as the give way vessel, and he attributed the collision to the steamship making a wrong manœuvre at the last moment :—

*Held*, on the facts, that the deft. was to blame for the collision and that in the circumstances it was not negligence on the part of the steamship to observe the International Rule, although such action involved her passing through the line of the squadron. H.M.S. "KING ALFRED"

Evans P. 30 T. L. R. 102

*Maritime Conventions Act, 1911.*

*Action for loss of life—Limitation of time—Claim against vessel—Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), s. 3—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 8.*

THE "CALIPH" - *Bargrave Deane J.*  
[1912] P. 213; 82 L. J. (P.) 27; 12 Asp. Mar. Law Cas. 244; 107 L. T. 274; 28 T. L. R. 597

*Both to blame—Different degrees of fault—Liability for damage—Costs—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.*

When in a collision action both ships are held to be in fault, but in different degrees, the practice in force before the passing of the Maritime Conventions Act, that each party to the action should bear their own costs, is to be followed, unless there are special circumstances in existence to induce the court to depart from it.

THE "BRAVO" - *Evans P. 12 Asp. Mar. Law Cas. 311; 108 L. T. 430; 29 T. L. R. 122*

*Fog—Collision Regulations, 1910, arts. 15, 16—Both to blame—Initial wrong—Degree of fault—Apportionment of damage or loss—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1—Costs.*

THE "ROSALIA" - *Bargrave Deane J.*  
[1912] P. 109; 81 L. J. (P.) 70; 106 L. T. 351; [1912] W. N. 76; 28 T. L. R. 287; 12 Asp. Mar. Law Cas. 166

*Fog—Sound signals—Tug fast but not towing—Excessive speed—Apportionment of blame—Sea Regulations, 1910, arts. 15 (a), (e)—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.*

THE "SARGASSO" - *Evans P. 82 L. J. (P.) 9; 12 Asp. Mar. Law Cas. 202*

*Retrospective application of statute—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57),*

**SHIPPING (Collision)—continued.**

*s. 9, sub-s. 2, 3—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419, sub-s. 4.*

THE "ENTERPRISE" - *Bargrave Deane J.*  
[1912] P. 207; 82 L. J. (P.) 1; 12 Asp. Mar. Law Cas. 240; 107 L. T. 271; 28 T. L. R. 598

*Tug and tow—Innocent tow—Two wrong-doing vessels—Division of loss—Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), s. 1.*

A barge while in tow of a tug was damaged by the steamship *C*. In an action by the barge owners against the owners of the tug and the owners of the steamship the Court found both the tug and the steamship to blame for the collision in equal degrees. The barge owners having recovered the whole of their damage against the owners of the steamship :—

*Held*, that by virtue of s. 1 of the Maritime Conventions Act, 1911, the owners of the steamship were entitled to recover half their loss (including therein the amount of the judgment recovered against them by the barge owners) from the owners of the tug.

Decision of *Evans P.* [1913] W. N. 165, affirmed. THE "CAIRNBARN" - *C. A. 30 T. L. R. 82*

*Mersey River.*

*Vessel coming out of dock into river—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 29.*

The Regulations for Preventing Collisions at Sea apply in the Mersey, but where one of two steam vessels "crossing so as to involve risk of collision" is a vessel coming out of dock, it is impossible to apply art. 19 before a certain time in the course of her manœuvres, and the two vessels must navigate in accordance with the rules of good seamanship (art. 29).

*Semble*, It depends on the distance the one vessel has got from the dock and on the distance the other vessel is from her when there becomes "risk of collision" whether art. 19 is applicable or not.

THE "SUNLIGHT" [1904] P. 100, considered.  
THE "LLANELLY" - *Div. Ct. 30 T. L. R. 154*

*Particulars.*

See PARTICULARS.

*Pleading.*

See PARTICULARS.

*Preliminary Act.*

*Lights—Form of answer—Order XIX., r. 28.*

THE "MONICA" - [1912] P. 147; 81 L. J. (P.) 92; 12 Asp. Mar. Law Cas. 164; 106 L. T. 348; 28 T. L. R. 154

*Sound Signals.*

*Sound signals for vessels in sight of one another—"Directing my course"—Regulations for Preventing Collisions at Sea, art. 28.*

A steam vessel bound, under the Regulations for Preventing Collisions at Sea, to keep her course and speed, found herself so close to a steam vessel bound to give way, that a collision could not be avoided by the action of the other vessel alone. She, therefore, by reversing her

**SHIPPING (Collision)—continued.**

engines and hard-a-porting, endeavoured to avoid the other vessel; but did not indicate her manœuvres by the appropriate sound signals required by art. 28 :—

*Held*, by the President (Sir Samuel Evans), that the omission to give the sound signals neither caused the collision, nor contributed to the casualty, and did not, in the circumstances, amount to a breach of the rule, as the words "I am directing my course to starboard" were not applicable to an attempt, at the last moment, to escape a collision. *THE "TEMPUS"*

**Evans P. [1913] P. 166; 29 T. L. R. 543**

*Steamships Crossing.*

*Overtaking and overtaken vessels—Crossing vessels—Suction or interaction—"Swerve"—Regulations for Preventing Collisions at Sea, arts. 19, 21, 24—Admission of further evidence.*

A large Atlantic liner outward bound from Southampton, when about to round the West Bramble Buoy, gave two short blasts of the whistle to indicate to one of His Majesty's cruisers, coming up the Solent, that she was starboarding in order to proceed by the eastern passage through the buoyed channel towards Spithead. The cruiser was, at the time, slightly on the starboard bow of the liner, over a mile distant, and, under port helm, was proceeding to round Egypt Point in the Isle of Wight in order to get into the same channel. Both vessels straightened on their courses, the liner S. 59° E., the cruiser S. 74° E., that is, on converging courses of 15 degrees, involving risk of collision, the liner having the cruiser on her starboard side. A few minutes later, when the vessels, practically parallel, were in shallow water, and distant some hundred yards from one another, the cruiser, through suction or interaction, or other uncontrollable cause, suddenly swerved towards the liner and a collision occurred.

On consideration of the courses of the two vessels, their speeds, their bearings, their distances, their helm actions, and especially the spot of collision, the Court below, in cross-actions of damage by collision, found that the cruiser was not, as alleged by the liner, an overtaking vessel bound, under the King's Regulations, equivalent to art. 24 of the Regulations for Preventing Collisions at Sea, to keep out of the way; and that the pilot compulsorily in charge of the liner had made too wide a sweep to the southward and was alone to blame for not keeping out of the way of the cruiser under the crossing rule (art. 19) of the same regulations.

The C. A. subsequently gave leave to the owners of the liner to call evidence before an examiner, as to the finding of the forefoot of the cruiser and other wreckage, with a view to shewing that the collision did not take place at the spot fixed upon in the Court below, and, therefore, that the calculations based upon it, as to the relative positions of the two vessels, at the material time, were inaccurate :—

*Held* by the C. A. (Vaughan Williams L.J., Kennedy L.J., and Lord Parker), that the appeal of the owners of the liner, and that of the Admiralty, must be dismissed, for though the finding of the wreckage tended to shew that the

**SHIPPING (Collision)—continued.**

spot of collision, fixed upon by the Court below, was not quite accurate, this did not materially affect the correctness of the conclusions arrived at.

*Per* Vaughan Williams L.J.: The evidence as to the finding of the wreckage was admitted by the C. A. on the ground that it was relevant and material to the decision of the action by the owners of the liner against the commander of the cruiser, and also because the Court was satisfied that the search for the wreckage was not postponed by the owners of the liner taking their chance of winning their case independently of any search for wreckage; but, in the result, the place where the wreckage was found could only be taken as approximately indicating the spot of the collision, because the Court was not satisfied that the forefoot of the cruiser was detached and fell off immediately on the happening of the collision.

*Per* Kennedy L.J.: In special circumstances, illustrated in the case of a winding river by *The Velocity* (1869) L. R. 3 P. C. 44, although two steam vessels, in a buoyed channel, are visibly approaching one another on converging courses, the rules of good seamanship, and not art. 19, may be held to regulate their respective duties towards each other, but this point, taken on behalf of the owners of the liner, did not apply in the circumstances of the present case, as the pilot of the liner could and should have obeyed the crossing rule.

*Per* Lord Parker: Witnesses were called on behalf of the cruiser to shew that the behaviour of the cruiser in coming round to port against a port helm might be accounted for by what was referred to as suction, but may possibly be better described as the interaction of two vessels moving through comparatively shallow water at great velocity and in close proximity. That there may at times be such interaction has already been recognized in admiralty cases; but the laws which govern it have been hitherto imperfectly investigated and are comparatively unknown. *THE "OLYMPIC" AND H.M.S. "HAWKE"*

**C. A. [1913] P. 214; 29 T. L. R. 441**

*Steamships Turning.*

*Thames By-laws, 1898, rr. 40, 42.*

A steam vessel turning round in the river, and giving the appropriate four-blast signal, under r. 40 of the *Thames By-laws, 1898*, is not required to give, in addition, three short blasts when, in the process of turning, her engines are going astern. *THE "HARBERTON"* - - - **Evans P. [1913] P. 149; 108 L. T. 735; 29 T. L. R. 490**

*Thames Custom.*

*Thames custom to keep to north side going up and vice versa—Port to port rule.*

There is no rule in the *Thames* that steamships keep to the north side going up, and the only rule is that if there is a risk of collision ships should go port to port—if there is no risk, there is no rule to prohibit starboard to starboard.

Appeal from decision of Bargrave Deane, J. 29 T. L. R. 321, allowed. *THE "MARIE GARTZ"*  
**C. A. 30 T. L. R. 88**

**SHIPPING (Collision)—continued.***Thames By-laws, 1898.**Steamship meeting sailing vessel.*

Art. 47 of the Thames By-laws is not confined to the case of steam vessels meeting steam vessels rounding the points mentioned in the article. It applies to the case of a steam vessel meeting a sailing vessel. *THE "URSULA FISCHER"* Evans P. 29 T. L. R. 529

*Steam vessel running aground—Anchor—Lights—Whistle signals—Thames By-laws, 1898, arts. 30, 40, 53.*

THE "BROMSGROVE" - Bargrave Deane J. [1912] P. 182; 82 L. J. (P.) 2; 12 Asp. Mar. Law Cas. 196; 106 L. T. 815

—Vessel aground at night — "Lights" —

"Vessel of 150 feet or upwards"—Thames By-laws, 1898, art. 30—Regulations for Preventing Collisions at Sea, art. 11.

The part of art. 30 of the Thames By-laws, 1898, which provides, "A vessel of 150 feet or upwards aground in or near a fairway shall carry the above light or lights," is not ambiguous as regards a vessel of above 150 feet, and such a vessel must carry the two lights. And, as the Thames rule applies to her, art. 11 of the Collision Regulations, 1910, which would interfere with that rule, does not apply to her.

Judgment of Bargrave Deane J. [1912] P. 186, affirmed. *THE "BITINIA"* - C. A. 82 L. J. (P.) 5; 12 Asp. Mar. Law Cas. 237; [1912] W. N. 288; 29 T. L. R. 99

*Tug and Tow.**Admiralty rule as to division of loss.*

"DEVONSHIRE" (OWNERS OF STEAMSHIP) v. "LESLIE" (OWNERS OF BARGE) AND OTHERS. *THE "DEVONSHIRE"* - H. L. (E.) [1912] A. C. 634; 81 L. J. (P.) 94; 12 Asp. Mar. Law Cas. 210; 107 L. T. 109; [1912] W. N. 213; 28 T. L. R. 551; 57 S. J. 10

*Sound signals—Tug blowing regulation towing signals—No signal by tow.*

The steamship *M.*, in tow of two tugs, and with no steam on her main engines, was proceeding up the Humber and was about to turn in the river when she was run into by the steamship *A.* It was a dark night and the weather was hazy. The *M.*'s head tug was blowing the regulation towing signals, but no whistle signals were being sounded on the *M.* herself, who had only got steam on her donkey boiler to work the winches.

*Held*, that the rules of good seamanship did not require the *M.* to sound her whistle, as to do so would be misleading to other vessels, as it might lead them into the belief that she had steam on her main engines; and, further, as she and her tugs had not commenced to turn, although they were preparing to do so, it would have been wrong for the turning signal to have been given. *THE "MARMION"* Bargrave Deane J. 29 T. L. R. 646

*Towage—Damage to cargo—Indemnity claimed from third party—Construction of contract—Implied term.*

A laden barge whilst in tow of a tug was sunk in the Mersey in a collision with a steam-

**SHIPPING (Collision)—continued.**

ship, and the owners of the lost cargo commenced an action of damage against the steamship and the tug. Thereupon the tug owners brought in the owners of the barge as third parties, and, in respect of any sum to which they (the tug owners) might be liable to the cargo owners, claimed a declaration that they were entitled to be indemnified by the barge owners under the terms of a "towage requisition" by which the tug owners (the Manchester Ship Canal Co.) were "not to be responsible or liable for damage or injury to any ship, vessel or craft, or the persons or goods on board any ship, vessel or craft, of which the co. may undertake the towage or docking in the river Mersey, the Manchester Ship Canal and the Bridgewater Canals, or which may be piloted by any of their servants to or from any place in the river Mersey, the said Ship Canal and the said Bridgewater Canals, or for any loss sustained or liability incurred by any one by reason of such damage or injury, or for any loss or liability incurred in consequence of any such ship, vessel or craft colliding with or otherwise damaging any other vessel or thing, or for any loss or liability of any kind whatsoever arising from the towing, docking or piloting, whatever may be the cause or causes of such damage, injury, loss or liability, or under whatever circumstances such damage, injury, loss or liability may have happened or accrued, even though arising from, or occasioned by the act, omission, incapacity, negligence or default, whether wilful or not, of the co.'s servants or agents or any other persons, or any defect, imperfection, or insufficiency of power in or any delay, stoppage or slackness of speed of any tug or vessel, her machinery or equipment engaged in towing or docking any ship, vessel or craft, whether such defect, imperfection or insufficiency of power be in existence at the beginning of or during the said towing or docking."

On the hearing of the issue as between the tug owners and the barge owners:—

*Held*, by the President (Sir Samuel Evans), that the third parties, the owners of the barge, were entitled to be dismissed from the action with costs, as no such liability by the third parties, namely, the owners of the barge, to indemnify the owners of the tug, could be implied from the terms of the towage requisition. *THE "DEVONSHIRE"* AND "ST. WINIFRED"

Samuel Evans, Pres. [1913] P. 13; 82 L. J. (P.) 61; 108 L. T. 427; 12 Asp. Mar. Law Cas. 314; 29 T. L. R. 86

**Costs.**

*See above, Collision.*

**Docks.**

*See DOCKS.*

**Fire.**

*Liability of shipowners for loss by fire—Loss happening by fault of shipowners—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 502.*

The pits were the owners of a cargo of benzine oil, which was shipped on the defts.' steamship *Edward Dawson* to be carried from Novorossisk to Rotterdam. The *Edward Dawson* was unseaworthy when she left

**SHIPPING (Fire)—continued.**

Novorossisk owing to the defective condition of her boilers, and in the course of her voyage she stranded in consequence of such unseaworthiness, and the benzine took fire and was destroyed, the stranding being the effective cause of the loss of the benzine. In an action by the plts. claiming for the loss of the benzine, the defts. relied on s. 502 of the Merchant Shipping Act, 1894 :—

*Held* (Vaughan Williams L.J. dissenting, on the facts, that the defts. were not entitled to the protection of that section, inasmuch as the loss had not happened without the actual fault or privity of the managing owners, who, in view of their knowledge of the history and condition of the boilers, ought to have given, and had in fact failed to give, special instructions in reference to the supervision of the boilers, and had left everything to the discretion of the captain and the chief engineer.

Decision of Bray J. 18 Com. Cas. 23, affirmed. ASIATIC PETROLEUM CO., LD. v. LENNARD'S CARRYING CO., LD. C. A. 18 Com. Cas. 328; 12 Asp. Mar. Law Cas. 269; 109 L. T. 433; 29 T. L. R. 849; 57 S. J. 784

See above, Bill of Lading—Exceptions.

**Freight.**

See above, Bill of Lading—Freight, Charterparty—Freight, and INSURANCE—Marine—Freight.

**Insurance.**

— Collision with nets of fishing vessels.  
See INSURANCE (MARINE).

**Jurisdiction.**

*Damage to goods*—"Carried into any port in England"—Bill of lading—Arbitration clause—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 6—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 4.

The plts., under a bill of lading, giving liberty to call at intermediate ports, and providing that any disputes as to its interpretation were "to be decided in Hamburg according to German law," shipped, at Hamburg, on board a German steam vessel, owned by the defts., ten cases of gold coin, for delivery to the order of the plts. at Monte Video or Buenos Aires. The vessel called at Southampton on the way out, and on her arrival at Monte Video only nine of the cases were delivered. On the return voyage to Hamburg the vessel again put into Southampton, where she was arrested on behalf of the plts. in an action for breach of contract or duty in respect of the missing case. On objection by the defts. to the jurisdiction of the English Court :—

*Held* by the President (Sir Samuel Evans), that under the words "goods carried into any port in England" in s. 6 of the Admiralty Court Act, 1861, the Court had jurisdiction to arrest the vessel and entertain the action; but that the proceedings must be stayed in order that the parties might litigate in Germany, as the clause in the bill of lading (set out above) amounted to a submission within the meaning of s. 4 of the Arbitration Act, 1889. The plts. appealed against the order to stay :—

**SHIPPING (Jurisdiction)—continued.**

The C. A. (Cozens-Hardy M.R. and Kennedy L.J.) allowed the plts. to withdraw the appeal on the defts. undertaking to waive a clause in the bill of lading rendering proceedings in Germany out of time. THE "CAP BLANCO" C. A. [1913] P. 130; [1913] W. N. 166; 29 T. L. R. 557

**Jury, Right to Trial by.**

— Mode of trial—Action against pilot—Negligence—R. S. C., Order XXXVI., rr. 5, 6.  
See JURY.

**"Passenger Steamer."**

*Condition not approved by Board of Trade—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 320.*

A ticket issued by the defts. to a steerage passenger travelling by one of their steamships contained on its face seven numbered clauses or directions, of which the seventh was as follows: "A contract ticket shall not contain on the face thereof any condition, stipulation, or exception not contained in this form." These clauses had been approved by the Board of Trade. On the back of the ticket were certain clauses, one of which—clause 3—exempted the defendants from liability for the negligence of their servants, but that clause had not been seen or approved by the Board of Trade under s. 320, sub-s. 2, of the Merchant Shipping Act, 1894 :—

*Held*, that the ticket was not in a form approved by the Board of Trade within s. 320, sub-s. 2, and therefore that in an action against them for the death of the passenger caused by their servants' negligence the defendants were not entitled to rely on clause 3 on the back of the ticket. O'BRIEN v. OCEANIC STEAM NAVIGATION CO., LD.

Bailhache J. 29 T. L. R. 629

*"Vessel used in navigation"*—Motor boat—Navigation—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 271, 742, 743.

A motor boat was used for carrying more than twelve passengers from Exeter along the river Exe for half a mile and for a further mile along a canal to the first lock, returning thence to Exeter. Below that lock the canal continued for two miles, through other locks, to the estuary of the river, and it was used by seagoing ships for the purpose of going to and from Exeter :—

*Held*, that the motor boat was a vessel "used in navigation" within the meaning of s. 742 of the Merchant Shipping Act, 1894, and was therefore a "passenger steamer" within s. 271.

Southport Corporation v. Morris [1893] 1 Q. B. 359, distinguished. WEEKS v. ROSS Div. Ct. [1913] 2 K. B. 229; 82 L. J. (K. B.) 925; 23 Cox, C. C. 337; 12 Asp. Mar. Law Cas. 307; 108 L. T. 423; [1913] W. N. 94; 77 J. P. 182; 29 T. L. R. 369

**Pilot.**

*Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), is an Act to consolidate and amend the laws relating to pilotage.*

**SHIPPING (Pilot)—continued.**

- Action against—Jury.

See above, **JURY**.

- Compulsory pilotage.

See above, **Collision**.

*Negligence of—Limitation of pilot's liability—Insufficiency of amount to satisfy claims of injured parties—Power to apportion among claimants—Merchant Shipping Act, 1894 (57 & 3 Vict. c. 60), s. 620.*

Where a Trinity House pilot has been guilty of neglect, and damage has been thereby caused to various persons exceeding in the aggregate the amount of his liability as limited by s. 620 of the Merchant Shipping Act, 1894, the Court has no power to apportion among the injured parties the limited amount for which he is liable, but the party who sues first is entitled, so far as the amount is sufficient for the purpose, and so far as it has not been exhausted by payments properly made to the other parties, to be paid in full. **DEERING & SONS v. TARGETT** - Div. Ct. [1913] 1 K. B. 129; 82 L. J. (K. B.) 85; 12 Asp. Mar. Law Cas. 273; 107 L. T. 709; 29 T. L. R. 100; 57 S. J. 113

**Port of London.**

- Docks.

See **DOCKS**.

- Registration of craft—Sailing barge.

See **LONDON—Port of London**.

**Sale of Goods.**

- "Free on board"—Goods sent by seller to buyer by sea—Notice by seller of shipment—Risk during voyage  
See **SALE OF GOODS**.

**Salvage.**

*King's ship—Right of commander, officers, and crew to reward.*

Salvage remuneration awarded to the commander, officers, and crew of a King's ship in respect of services rendered by them to the *effs.* steamship. **THE "DOMIRA"**

**Evans P. 29 T. L. R. 557**

*Steam trawlers as salvors—Loss of fishing—Right of salvors to recover loss of profit.*

**THE "FAIRPORT"** • • **Bargrave Deane J.** [1912] P. 168; 82 L. J. (P.) 108; 106 L. T. 382; 12 Asp. Mar. Law Cas. 165

*Towage—Abandoned vessel—Derelict—Quantum meruit—Conditions substituting salvage for towage.*

The *plts.* contracted for the sum of 400*l.* to tow the *defts.* rudderless steamship from Vigo to the Tyne "no cure no pay, no claim to be made for salvage." Whilst the towage was proceeding, the master and crew of the steamship left her, and the tug, with other assistance, took the steamship first to Falmouth and then on to the Tyne:—

*Held* by the President (Sir Samuel Evans), at the contract was to tow, with the assistance of another tug, from Vigo to the Tyne, a partially disabled vessel, with her master and crew on board; that the contract came to an

**SHIPPING (Salvage)—continued.**

end through the fault of those in charge of the steamship, for though the vessel was not technically a derelict, as the tug was in attendance under contract, still as the master and crew, without sufficient justification, had abandoned her, from that time the services rendered by the tug were not performed under contract but were in the nature of salvage for which, on a value of 11,711*l.*, the award would be 1400*l.*, and, on the basis of a quantum meruit, 300*l.* for the previous services. **THE "GLENMORVEN"** Samuel Evans, P.

82 L. J. (P.) 113; [1913] P. 141; 29 T. L. R. 412

**Seaman.**

*Persuading seamen to desert—Articles not signed—"His ship"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 236.*

Case stated by a stipendiary magistrate.

William Crowe was engaged at Whitby to serve as a seaman on board the British steamship *Japanese Prince* by the agent of the steamship, who ordered him to go to Middlesbrough, having advanced him his railway fare. On May 22, 1913, Crowe went on board the *Japanese Prince* at Middlesbrough, and delivered up his discharge book to an officer on board that vessel. On May 23 he was ordered to go to the Board of Trade offices for the purpose of signing the agreement as prescribed by the Act. Before Crowe had signed the agreement, the appellant attempted to persuade him to refuse to go to sea on board the *Japanese Prince*. Crowe subsequently signed the agreement and received and cashed an advance note, but in consequence of the appellant's conduct he did not proceed to sea but remained on shore, leaving his discharge book and kit on board the *Japanese Prince*. There was no evidence that the appellant had any conversation with Crowe after he had signed the agreement.

On these facts the magistrate convicted the appellant of an offence under s. 236 of the Merchant Shipping Act, 1894, but stated a case for the opinion of the Court on the application of the appellant.

The question for the Court was whether in relation to Crowe the *Japanese Prince* could be said to be "his ship" before the agreement was signed as prescribed by the Act.

The Court held that the *Japanese Prince* was "his"—i.e., Crowe's—"ship" and dismissed the appeal. **VICKERSON v. CROWE**. Div. Ct. [1913] W. N. 341; 30 T. L. R. 111

*Wages—Extra sum for services—Sum not specified in articles of employment—Right to recover—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 113, 114, 742.*

By s. 113 of the Merchant Shipping Act, 1894, the master of a ship shall enter into an agreement with every seaman whom he carries to sea as part of his crew; and by s. 114 the agreement shall be signed by the master and seaman, and shall contain, inter alia, "the amount of wages which each seaman is to receive." By s. 742, "seaman" includes every person, except masters, pilots, and apprentices, employed or engaged in any capa-



**SHIPPING (Seaman)—continued.**

city on board any ship; and "wages" in-cludes emoluments.

The plt. entered the service of the defts., who were the owners of a line of ocean steamers, as a steward on board one of their vessels, and he signed articles of agreement with the master in which his wages were stated to be 10*l.* a month. Part of his duties was to take charge of the bar, and he was paid, in addition to the 10*l.* a month, a commission of 5 per cent. upon the profits thereof. Subsequently it was verbally agreed between the plt. and the superintendent steward that he should receive 5*l.* a month instead of the 5 per cent. commission. Neither the commission of 5 per cent. nor the sum of 5*l.* a month in lieu thereof was entered in the articles. In an action to recover 10*l.*, being two months' extra payment in lieu of the commission:—

*Held*, that, as it was part of the plt.'s duties as steward to take charge of the bar, the extra sum of 5*l.* a month was payable for the performance of his duties as steward, and was therefore part of his "wages" as a "seaman," and as it was not entered in the articles, it was not recoverable. *THOMPSON v. H. & W. NELSON, LD.* - Div. Ct. [1913]

2 K. B. 523; 82 L. J. (K. B.) 657; 108 L. T. 847; [1913] W. N. 115; 29 T. L. R. 422

*Wages—"Wreck"—Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), ss. 158, 162.

The plts., two members of the crew of a steamship, subscribed their names to articles of agreement by which they undertook to serve on board the ship, in the capacities and at the wages therein mentioned, on a voyage from Southampton to New York, and/or, if required, to any port within the North Atlantic and South Atlantic Oceans, trading as may be required, until the ship returns to a final port of discharge in the United Kingdom for any period not exceeding twelve months, and should the vessel put back into port through accident, the crew to be transferred to any other vessel belonging to the same owners taking the place of the vessel named.

On the same day that the vessel left Southampton for New York she came into collision with another vessel, and was so seriously damaged in the hull that she was obliged to come to anchor, and the next day to return, under her own steam, to Southampton, where the crew, including the plts., were discharged with three days' pay, and her passenger and free-board certificates having been, on demand, returned to the Board of Trade, the vessel was sufficiently patched up to enable her to proceed to Belfast, where she could be repaired, and, at the end of nine weeks, she received back the above-mentioned certificates enabling her to proceed to sea on the voyage from Southampton to New York.

The plts., under s. 162 of the Merchant Shipping Act, 1894, claimed, in addition to the three days' wages earned by them, a further sum of one month's wages by way of compensation for the damage caused to them by being discharged otherwise than in accordance

**SHIPPING (Seaman)—continued.**

with the terms of the agreement, without fault on their part, and without their consent:—

*Held* by the C. A. (Vaughan Williams L.J. and Buckley L.J., Kennedy L.J. dissenting), affirming the decision of Bargarve Deane J. (28 T. L. R. 356), dismissing the claim of the plts. with costs, that, in the circumstances, by reason of the injury sustained by the vessel in the collision, she had ceased to be in a seaworthy condition to continue the adventure, so that, in respect of the voyage agreed upon, the case fell within the words of s. 158 of the above-mentioned Act, namely, that "by reason of the wreck . . . of the ship" the service of the plts. had terminated before the date contemplated by the agreement, and, therefore, the plts. had been properly discharged with three days' pay.

*Per* Kennedy L.J.: The damage caused to the vessel by the collision delayed the voyage, but did not dissolve the contract with the crew, and, therefore, if the defendants, the owners of the ship, chose, for their own pecuniary advantage, to relieve themselves of the burden of that contract, they were liable, under s. 162 of the Act, to pay the compensation, not exceeding one month's wages, claimed by the plts. *THE "OLYMPIC" (WAGES)* - C. A. [1913] P. 92; 82 L. J. (P.) 41; 12 Asp. Mar. Law Cas. 318; 108 L. T. 592; [1913] W. N. 71; 29 T. L. R. 355; 57 S. J. 388

**Strikes.**

*See* above, Bill of Lading—Exemptions and Charterparty—Demurrage and Strike Clause.

**Wages.**

*See* above, Seaman.

**Warehousing.**

*See* Bill of Lading—Freight.

**Weighing.****—Docks.**

*See* DOCKS.

**Workmen's Compensation.**

*See* WORKMEN'S COMPENSATION.

**Wreck.**

*See* above, Seaman.

**SHOPKEEPER** — Dangerous article — Sale by manufacturer to shopkeeper — Purchase by plaintiff from shopkeeper — Defect unknown to manufacturer — Injury to plaintiff — Liability of manufacturer. *See* NEGLIGENCE.

**SHOPS**—Bank holiday—Christmas Day—Week-days—Two bank holidays in one week—Statute—Construction—Words in singular not read as including plural—Shops Act, 1912 (2 Geo. 5, c. 3), s. 1, sub-s. 1—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1, sub-s. 1 (b).

**SHOPS—continued.**

Sect. 1, sub-s. 1, of the Shops Act, 1912, enacts that on at least one week-day in each week a shop assistant shall not be employed about the business of a shop after half-past 1 o'clock in the afternoon; provided that this provision shall not apply to the week preceding a bank holiday, if the shop assistant is not employed on the bank holiday, and if on one week-day in the following week in addition to the bank holiday the employment of the shop assistant ceases not later than half-past 1 o'clock in the afternoon.

H. was employed as an assistant in the appellants' shop on each week-day of the week ending Saturday, Dec. 21, after half-past 1. In the following week he was not employed on Christmas Day or the day following, but was employed on every other week-day of that week after half-past 1 in the afternoon. The appellants were charged on summonses with having failed to comply with s. 1 of the Shops Act by employing H. for every day of the week ending Dec. 21 after the hour of half-past 1 in the afternoon:—

*Held*, it being assumed that Christmas Day was a bank holiday within the meaning of the Act, that the expression "bank holiday" in sub-s. 1 of s. 1 must be read in the singular only; that the expression "week-day" was used in contradistinction to Sunday, and not to holiday; and that therefore the case came within the proviso in sub-s. 1, and the appellants could not be convicted of the offence charged.

*Quære*, is Christmas Day a bank holiday within the meaning of the Shops Act, 1912? *TODD, BURNS & CO., LD. v. DUBLIN CORPORATION* - - - Div. Ct. [1913] 2 I. R. 397

*Closing on weekly half-holiday—Exemption of area—Rescission of resolution of local authority—Unreasonably small area—Mandamus—Shops Act, 1912 (2 Geo. 5, c. 3), ss. 4, 18.*

In April, 1912, the occupiers of shops within a certain area petitioned the local authority under s. 4, sub-s. 4, of the Shops Act, 1912, to exempt that area from the operation of the Act; and at a meeting on June 5 the council by resolution accepted the area for the purposes of that enactment. Voting papers were issued accordingly, and a majority of the shopkeepers voted in favour of the exemption. On July 3 the local authority rescinded their resolution of June 5 on the ground that the area in question was unreasonably small.

An application was therefore made by one of the shopkeepers in the area for a mandamus requiring the local authority to make the exemption order under s. 4, sub-s. 4, on the ground that as the area had been accepted by the council as sufficiently large, and a vote had been taken of the occupiers of shops of all classes within it, which disclosed a majority in favour of the exemption, the council could not thereafter hold the area to be unreasonably small:—

*Held*, that after the resolution of June 5 was rescinded, there was either no duty on the council to act upon it, or if there were, it was a duty within the discretion of the council and not one

**SHOPS—continued.**

which, in the circumstances, the Court would enforce by mandamus. *REX v. MANCHESTER CITY COUNCIL. Ex parte BATTY* - Div. Ct. 10 L. G. R. 1081; 107 L. T. 617; 77 J. P. 43; 29 T. L. R. 28.

*Shop assistant—Hours of employment—Employment after half-past 1—Assistant working contrary to orders—Shops Act, 1912 (2 Geo. 5, c. 3), ss. 1, 14.*

By s. 1, sub-s. 1, of the Shops Act, 1912, on at least one week-day, in each week a shop assistant shall not be employed about the business of a shop after half-past 1 in the afternoon. By sub-s. 4, in the case of any contravention of, or failure to comply with, the provisions of the section, the occupier of the shop shall be guilty of an offence under the Act.

By s. 14, sub-s. 2, where an offence for which the occupier of a shop is liable has in fact been committed by some manager, agent, servant, or other person, the manager, agent, servant, or other person shall be liable to the like penalty as if he were the occupier. By sub-s. 3, where the occupier is charged with an offence against the Act, he is entitled upon information laid by him to have any other person whom he charges as the actual offender brought before the Court, and if he proves that he has used due diligence to enforce the execution of the Act, and that the other person has committed the offence without his knowledge, consent, or connivance, the other person shall be convicted, and the occupier shall be exempt from any fine.

The owners of a bookstall, who were alleged to be the occupiers of a shop within the meaning of the Act, had given notice to the clerk in charge of the bookstall requiring him to take his weekly half-holiday and had, so far as they were able, insisted upon his taking it. They had in pursuance of s. 1, sub-s. 2, of the Act fixed and specified by notice in the bookstall in the prescribed form a certain day of the week on which the clerk was not employed after half-past 1 o'clock in the afternoon. It made no pecuniary difference to him whether he took the weekly half-holiday or not. In a certain week in disobedience to his orders he took no weekly half-holiday and persisted in working in the bookstall after half-past 1 on the day specified.

On an information laid against the alleged occupiers:—

*Held* by Phillimore and Bankes JJ. (Avory J. dissenting), assuming the bookstall to be a shop, that an offence had been committed under s. 1, sub-s. 1, of the Act, and that the proper course for the occupiers was to lay an information against the clerk and bring him before the Court under s. 14, sub-s. 3, of the Act. *WARD v. W. H. SMITH & SON*

Div. Ct. [1913] 3 K. B. 154; 82 L. J. (K. B.) 941; 11 L. G. R. 741; 109 L. T. 439; [1913] W. N. 165; 77 J. P. 370; 29 T. L. R. 536

*Weekly half-holiday—Exempted trades—Motor cycle and aircraft accessories—Saddler*

**SHOPS**—*continued.*

*and harness maker*—Shops Act, 1912 (5 Geo. 5, c. 3), s. 4 and Sched. II.

The trade or business of a saddler and harness maker does not fall within the exemption from the provisions of the Shops Act, 1912, as to the weekly half-holiday. The sale of supplies and accessories to travellers mentioned in the Second Schedule applies only to travellers by motor cycle, or aircraft, and not to travellers at large who might desire to purchase anything at a saddler's and harness maker's shop. **WILLIAMS v. GOSDEN**—Div. Ct. 11 L. G. R. 1174;

[1914] 1 K. B. 35; [1913] W. N. 287;  
30 T. L. R. 4; 58 S. J. 49; 77 J. P. 464

• *Weekly holiday*—*Exempted trade*—*Butter*—*Run honey*—*Confectionery*—Shops Act, 1912 (2 Geo. 5, c. 3), s. 4, sub-ss. 1, 6, 7; Sched. II.

By s. 4, sub-s. 1, of the Shops Act, 1912, every shop shall, save as otherwise provided by the Act, be closed for the serving of customers not later than 1 o'clock in the afternoon on one weekday in every week.

By sub-s. 6, the section is not to apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the Second Schedule to the Act, including "the sale of meat, fish, milk, cream, bread, confectionery, fruit, vegetables, flowers, and other articles of a perishable nature."

By sub-s. 7, in case of contravention of the section, the occupier of the shop is guilty of an offence and liable to a fine.

The respondents carried on the business of dairymen, and kept a shop in which they sold milk, cream, and butter, and in addition honey in pots. On the day fixed for the weekly half-holiday the respondents' shop was open after 1 o'clock and the manager sold to a certain applicant some butter and a pot of run honey.

On an information charging the respondents with an offence under s. 4 of the Act a Court of summary jurisdiction held that butter was an article of a perishable nature and that run honey was confectionery within the meaning of the Second Schedule, and that no offence had been committed.

On a case stated:—

*Held* (Ridley, Pickford, and Avory JJ.), that butter was an article of a perishable nature within the meaning of the Second Schedule; but

*Held* by Pickford and Avory JJ. (Ridley J. dissenting), that, there being no evidence upon which run honey could be held to be confectionery within the meaning of the schedule, the sale of run honey was not a trade or business exempted from the operation of s. 4 and that an offence had been committed. **LONDON C. C. v. WELFORD'S SURREY DAIRIES Co., LD.**

Div. Ct. [1913] 2 K. B. 529; 11 L. G. R. 1831; 23 Cox. C. C. 428; [1913] W. N. 130; 77 J. P. 206; 29 T. L. R. 438

**SIGNATURE**—Franchise—Case stated by revising barrister—Signature by registration agent on behalf of claimants.  
*See* **PARLIAMENT—Ownership Franchise.**

**SLANDER**—Trade union—Slander on officer as such—Action by officer—Indemnity by union against costs—Ultra vires.  
*See* **MAINTENANCE.**

**SMALL HOLDINGS**—*Compensation to outgoing tenant*—"Loss or expense directly attributable to the quitting"—"Unavoidable"—Sale or removal—Right of tenant to determine whether he will remove or sell—Loss on compulsory sale—Cost of refreshments at sale—Valuation fee—Small Holdings Act, 1910 (10 Edw. 7, c. 34), s. 1, sub-s. 1.

*In re* **AN ARBITRATION BETWEEN EVANS AND THE GLAMORGAN COUNTY COUNCIL**—Joyce J.  
10 L. G. R. 805; 76 J. P. 468; 28 T. L. R. 517; 56 S. J. 688

*Compulsory purchase*—Costs—Petition for payment out—Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), ss. 39, 41—*Lands Clauses Consolidation Act, 1845* (8 Vict. c. 18), s. 80—Wilful refusal to convey.

*In re* **JONES AND OTHERS AND THE CARDIGANSHIRE C. C.** *In re* **THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908**—Farwell L.J.  
57 S. J. 374

**SMELL**—Sewage farm—Nuisance—Discharge of sewage on private land—Agricultural ditch—Injunction—Damages.  
*See* **LOCAL GOVERNMENT—Drainage.**

**SOCIETY OF FRIENDS.**

*See* **FRIENDS, SOCIETY OF.**

**SOLICITATION**—Soliciting for immoral purposes—Male person—Solicitation not reaching mind of person solicited.  
*See* **CRIMINAL LAW—Evidence.**

**SOLICITOR.**

*Admission, col.* 620.

*Agent and Client.* *See* **SCOTTISH LAW.**

*Costs, col.* 621.

*Misconduct, col.* 624.

*Retainer, col.* 624.

*Right of Audience, col.* 624.

*Taxation.* *See* above, *Costs.*

*Unqualified Person, col.* 625.

**ACQUSSION.**

*Women*—*Disqualification*—*Inveterate Usage.*

The plt., a spinster, applied to the Law Society to admit her to their preliminary examination under the Solicitors Act, 1877, with a view to her becoming a solicitor. On their refusal she brought this action for a declaration that she was a person within the meaning of the Solicitors Act, 1843, and a mandamus directing the Law Society to admit her to the preliminary examination.

Joyce J. dismissed the action ([1913] W. N. 209), and the plt. appealed.

The C. A. dismissed the appeal. Their Lordships said that the fact that no woman had ever been an attorney or solicitor during the several centuries since the profession had been recognized was evidence that before the Act of

**SOLICITOR (Admission)—continued.**

1843 women were under a disability, by reason of their sex, to become attorneys or solicitors, and this was confirmed by the opinion of Lord Coke, stated 300 years ago (Co. Litt. 128a). That being the case, it was not seriously contended that there was anything in the Act of 1843 or any of the amending Acts which could remove the disability or give women a new right to be solicitors. The appellant's contention therefore failed. *BEBB v. THE LAW SOCIETY*

[1913] W. N. 355; 30 T. L. R. 179;  
58 S. J. 153

**Agent and Client.**

— Negligence—Breach of duty—Solicitor and bank agent.

• See SCOTTISH LAW.

**Costs.**

*Solicitor and client—Conveyancing costs—Taxation—Abortive sale—No subsequent sale—Scale fees—Pen charges—Amendment of bill delivered—General order under Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 2, sub-ss. (a), (c); Sched. I., Part I., r. 2; Sched. II.*

There is no inconsistency between the provisions in Part I. of Sched. I. to s. 2 (a) and those in s. 2 (c) and Sched. II. of the General Order to the Solicitors Remuneration Act, 1881, with respect to conveyancing business. Sect. 2 (a) and Sched. I., Part I., prescribe the scale of charges for a completed sale and also for an ineffectual sale which is afterwards followed by a completed sale. Sect. 2 (c) and Sched. II. prescribe the scale of charges where there has been an abortive sale not followed by a subsequent sale.

Where on taxation of a solicitor's bill of costs he finds that he has made an error in the bill delivered and has charged for certain items on the wrong scale, he may be allowed to lodge an amended bill of item charges in the particular matter, provided that the aggregate of the item charges in the amended bill when taxed is, if necessary, reduced to the aggregate amount of the items improperly charged in the bill first delivered. *In re STEAD. SMITH v. STEAD*

*Neville J.* [1913] 1 Ch. 240; 82 L. J. (Ch.) 143; 108 L. T. 28; [1913] W. N. 4;  
57 S. J. 187

*Solicitor and client—Conveyancing costs—Taxation—Scale fee—Mortgage to bank—Amount not, named in mortgage—"Completed mortgage"—Solicitors' Remuneration Act, 1881 (44 & 45 Vict. c. 44)—General Order, r. 2 (a), Sched. I., Part I.*

*In re BAKER. Parker J.* [1912] 2 Ch. 403; 81 L. J. (Ch.) 805; 106 L. T. 1012

*Solicitor and client—County Court—Costs in proceedings in—Bill delivered to client—Bill not taxed—Solicitor's right to sue—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 118.*

Sect. 118 of the County Courts Act, 1888, which prevents a solicitor recovering from his client costs incurred in a county court, "unless they shall have been allowed on taxation," does not make taxation a condition pre-

**SOLICITOR (Costs)—continued.**

cedent to the solicitor's right to sue for his costs, even if the time within which the client is entitled to taxation has not expired.

*Cubison v. Mayo* [1896] 1 Q. B. 246, explained. *BELL v. GIRDLESTONE. Div. Ct.*  
[1913] 2 K. B. 225; 82 L. J. (K. B.) 696;  
[1913] W. N. 107

*Solicitor and client—Taxation—Agreement as to costs—Bill of exchange—Bill taken as payment—Payment not to be enforced for two years—Delivery of bill of costs—"Fair and reasonable"—Practice—Attorneys and Solicitors Act, 1870 (33 & 34 Vict. c. 28), s. 4—Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44), s. 8, sub-ss. 1, 4.*

A solicitor cannot evade his obligation to deliver a bill of costs by taking a bill of exchange from his client for an agreed amount.

On Mar. 22, 1910, the debt. entered into an agreement with his solicitor, whereby the debt. agreed the costs due from him to the solicitor for work done at the sum of 2000*l.* and gave him a bill of exchange for that amount payable on demand; the payment not to be enforced for two years. In 1912 the receiver of the property of the solicitor's firm, appointed in a partnership action, presented the bill, which was dishonoured, and then brought an action on the bill in the name of the firm against the debt., claiming 2000*l.* and interest from Mar. 22, 1912. The debt. obtained leave to defend the action and, without delivering a defence, he issued a summons (which was not intitled in the matter of the Solicitors Acts) asking for an order that the plts. should deliver to him a complete bill of costs for work done up to Dec. 11, 1909; that the agreement should be inquired into under s. 4 of the Attorneys and Solicitors Act, 1870, and s. 8 of the Solicitors' Remuneration Act, 1881, and the bill taxed; and that proceedings in the action should be stayed:—

*Held*, that the client was entitled under the Acts of Parliament to have a complete bill of costs delivered and an inquiry into the agreement; that the solicitor could not escape from this liability by taking a bill of exchange for the agreed amount; that the summons must be headed under the Acts of Parliament; and that the action ought not to be stayed. *RAY v. NEWTON. C. A.* [1913] 1 K. B. 249; 82 L. J. (K. B.) 125; 108 L. T. 313; [1912] W. N. 270;  
57 S. J. 130

*Solicitor and client—Uncertificated solicitor—Costs and disbursements—Not retainable by solicitor out of moneys of client in his hands—Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12.*

The Attorneys and Solicitors Act, 1874, s. 12, provides that "No costs, fee, reward, or disbursement on account of or in relation to any act or proceeding done or taken by any person who acts as an attorney or solicitor, without being duly qualified so to act shall be recoverable in any action, suit, or matter by any person or persons whomsoever."

A solicitor, during a time when he was not duly qualified, because he had not taken out a certificate, acted for a client in certain bankruptcy proceedings, and in anticipation that

**SOLICITOR (Costs)—continued.**

it would be necessary to deposit 125*l.* in the Bankruptcy Court as a result of those proceedings, the client deposited that sum in his solicitor's hands to be used for that purpose. It subsequently became unnecessary to make a deposit in the Bankruptcy Court, and the client directed the solicitor to retain the money for his costs. The solicitor did not deliver a bill of costs to his client, and claimed the right to retain the money in his hands to meet his costs and disbursements on behalf of his client:—

*Held* (reversing the decision of Channell J.), that the direction of the client was a direction to make payments proper to be made by the solicitor as a solicitor, that therefore both parties must have contemplated that a taxation would be necessary, and that s. 12 of the Solicitors Act, 1874, applied, and that the client was entitled to have repaid to him by the solicitor such of the amounts as might be disallowed on taxation. *BROWNE v. BARBER*  
C. A. [1913] 2 K. B. 553; 82 L. J. (K. B.) 1006; 108 L. T. 774.

*Taxation—Bill for party and party costs delivered to opposite party—Bill for solicitor and client costs subsequently delivered to client—Contents of bill—Practice.*

A firm of solicitors had acted for a client in a successful action. They delivered a bill of costs as between party and party to the unsuccessful party which, after taxation, was paid. They afterwards, upon a request from their client to send in a bill of solicitor and client costs, delivered to him a bill which included all the items already included in the bill of party and party costs. The client then took out a summons asking for an order that the bill, so far as it related to solicitor and client items, and in so far as the items had not been allowed on taxation and paid by the debts, should be referred to the Master to be taxed; which summons was dismissed:—

*Held*, that the solicitor and client bill as delivered properly included the party and party items that had formed the subject of the bill previously delivered to the opposite party, and that the summons asking for a separate taxation of the solicitor and client items was rightly dismissed. *In re OSBORN & OSBORN*

C. A. [1913] 3 K. B. 862; 109 L. T. 505

*Taxation—Party and party costs—Expenses of plaintiff as witness—Evidence of expenses required by taxing Master.*

On the taxation of party and party costs, taxing Masters have made a practice that, before including in the allocatur allowances made to a witness for expenses, &c., the solicitor moving for taxation should produce either a voucher acknowledging the receipt by the witness or a letter from the witness satisfying the Master that he had knowledge of the amount which it was proposed to allow him:—

*Held* by Buckley and Kennedy L.J.J., that the rule was not open to any objection; but that a summons taken out to shew cause why the decision of the taxing Master, disallowing the objections of the witness (who was the plt. in the action) should not be set aside and the items

**SOLICITOR (Costs)—continued.**

in respect of which objections had been carried in should not be allowed, was wrong, in point of form, there being no concluded taxation which could be made the subject of review. They, however, in the circumstances, dealt with the matter, and, expressing the opinion that Scrutton J. was wrong in dismissing the summons on the ground that he declined to interfere with the rule on which the taxing Master had acted, dismissed the summons.

Vaughan Williams L.J. (*dissentiente*) was of opinion that the taxing Masters had no jurisdiction to make such a rule, as it cast an uncalled-for slur on solicitors as a profession, and that the plt.'s objection that he could not give a receipt for what had not actually been paid him was well founded. *HARBEN v. GORDON AND ANOTHER* - - - C. A. 58 S. J. 140.

*See COSTS and COUNTY COURT—Costs.*

**Misconduct.**

*Professional misconduct—Solicitor's interest in debt-collecting business—Champertous arrangement.*

The Law Society found that the respondent by his interest in and connection with a debt-collecting association had been guilty of professional misconduct:—

*Held*, that this finding was right, but that as the respondent, on becoming aware that his connection with the association was unprofessional, at once severed his connection with it, it was sufficient to order him to pay the costs of the proceedings. *In re A SOLICITOR; Ex parte THE LAW SOCIETY*

Div. Ct. 29 T. L. R. 354

**Retainer.**

*Authority—Costs.*

A solicitor having entered an appearance and taken other steps in a litigation on behalf of certain defendants for whom he had in fact no authority to act, although he bona fide believed that he had authority, was ordered to pay their costs of setting aside the appearance and all subsequent proceedings as between solicitor and client, and the plt.'s costs of the application as between party and party. *PORTER v. FRASER*

Neville J. 29 T. L. R. 91

*Authority to issue a writ—Reputation by client—Subsequent adoption.*

A retainer to solicitors "to take such steps as may be advised against W. T. and his co-trustees, in order to protect the assets of the N. O. A. P. Trust," is a retainer to bring an action that the trust may be dissolved and its affairs wound up by the Court. *In re THE NATIONAL OLD AGE PENSIONS TRUST. STEVENS v. TAVERNER AND OTHERS* - Warrington J.

57 S. J. 114

**Right of Audience.**

*Practice—Conduct of case—Right of audience of solicitor in absence of counsel.*

In the course of the hearing of this case, which otherwise presented no special feature of public or legal interest, counsel and solicitor for the petitioner both being absent, the learned President himself proceeded to examine the

**SOLICITOR (Right of Audience)**—*continued.*

petitioner and two of his witnesses. On the arrival later of the petitioner's solicitor's clerk, counsel being still absent, the President inquired whether he were a qualified solicitor and received an answer from him in the negative. The President then said that, if he had been a qualified solicitor, he would have granted him right of audience. **BUTTERWORTH v. BUTTERWORTH AND QUEENAN** - - - **Evans P. 57 S. J. 266**

**Taxation.**

*See above, Costs.*

**Unqualified Person.***Contempt of Court.*

Where an unqualified person acted in obtaining a decree nisi for divorce made absolute, and asked for and obtained from the petitioner a larger sum than was really payable as the necessary fee, the Court, holding that he had been guilty of contempt of Court, made an order that he should be committed to prison for six weeks, and pay the costs of the proceedings against him for attachment. **DAVIES v. DAVIES**. *In re ISAAC WATTS*

**Bargrave Deane J. 29 T. L. R. 513 ; 57 S. J. 534**

*Possession of property or money—Falsely holding out that person is a solicitor—Summary jurisdiction of Court.*

*In re* **HURST & MIDDLETON, LD. C. A. [1912] 2 Ch. 520 ; 82 L. J. Ch. 114 ; 107 L. T. 502**

**SOUND SIGNALS**—Ship—Collision.

*See SHIPPING—Collision.*

**SPECIFIC BEQUEST**—Leasehold house—Rent and outgoings to be paid out of general estate.

*See SETTLED LAND.*

**SPECIFIC DEVISE**—of reversion—Administration—Will—Lease by testator—Covenant by lessor—Liability for performance after lessor's death.

*See ADMINISTRATION.*

**SPECIFIC PERFORMANCE**—Forfeiture, Relief against—Default in payment of an instalment of purchase-money—Time of the essence of the contract.

*See FORFEITURE.*

## — Vendor and purchaser.

*See VENDOR AND PURCHASER.*

**STANNARIES**—Mining partnership of two—"Company"—*Winding-up—Jurisdiction—High Court—County court—Joint Stock Companies Act, 1849 (12 & 13 Vict. c. 108), s. 1—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 4, 81—Stannaries Act, 1869 (32 & 33 Vict. c. 19), ss. 2, 3—Stannaries Act, 1887 (50 & 51 Vict. c. 43), ss. 2, 3, 28—Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 1, sub-s. 2 (c)—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 131, sub-s. 4 ; ss. 267, 285.*

**STANNARIES**—*continued.*

A partnership of two persons formed to work metalliferous mines in Cornwall is a "company" within the meaning of that term in ss. 2 and 28 of the Stannaries Act, 1887, and is by s. 1, sub-s. 2 (c), of the Partnership Act, 1890, excluded from the provisions of that Act ; and, by virtue of s. 1 of the Stannaries Court (Abolition) Act, 1896, and s. 131, sub-s. 4, of the Companies (Consolidation) Act, 1908, the county courts of Cornwall now have exclusive jurisdiction to wind up such a co.

*So held by the C. A., affirming the decision of* **Neville J. DUNBAR v. HARVEY. C. A. [1913] 2 Ch. 530 ; 82 L. J. (Ch.) 452 ; 109 L. T. 285 ; [1913] W. N. 207 ; 57 S. J. 686**

*Winding-up—Working mines within the Stannaries—Petition—Court exercising Stannaries jurisdiction—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 131, sub-s. 4 ; s. 133, sub-s. 1.*

The High Court has jurisdiction under s. 133, sub-s. 1, of the Companies (Consolidation) Act, 1908, to transfer to the Court exercising the Stannaries jurisdiction a petition to wind up a co. formed to work mines within the Stannaries.

*Quære, whether the High Court has jurisdiction to retain such a petition.*

Appeal from decision of **Astbury J., 30 T. L. R. 26, dismissed. In re THE RADIUM ORE MINES, LD. C. A. 30 T. L. R. 66**

**STATUTE**—Construction—Enabling words—"May" equivalent to "must."  
*See JUSTICES—Criminal Law—Jurisdiction.*

— Construction—Two Acts to be construed together as one Act.  
*See NUISANCE.*

— Construction—Working Urban District Council (Basingstoke Canal) Act, 1911—Meaning of "the company, its successors and assigns."  
*See CANAL.*

— Exemption from taxes and assessments—City of London—Poor rate—County rate—Education expenses—Equalization charge.  
*See LONDON—Rates.*

— Repugnancy between statutes of same year—Later chapter to prevail—Laws of British Columbia.  
*See CANADA—British Columbia.*

— Temporary and permanent provisions—Continuance.  
*See COAL.*

**STATUTES.**

*Enacted during the year 1913, p. xcv.*

*Judicially considered during the year 1913, p. ciii.*

**STAYING ACTION**—Patent—Staying threats action—Costs.  
*See PATENT—Threats Action.*

**STAYING PROCEEDINGS**—Building contract—Arbitration clause—Reference to building owner's engineer—Disqualification—Dispute involving examination of engineer.  
See **ARBITRATION**—Building Contract.

**STEAMER**—"Passenger steamer"—"Vessel used in navigation."  
See **SHIPPING**—Passenger Steamer.

**STOCKBROKER**—Open account—Death of client before settling day—Duty of broker—Liability of broker to account.  
See **STOCK EXCHANGE**.

**STOCK EXCHANGE**—"Half-commission man"—Seat in broker's office—Contract of employment—Termination of service—Subsequent orders—Prior orders to carry over—Right to commission.

The plt. was a "half-commission man" and the defts. were stockbrokers and members of the London Stock Exchange, and an agreement was made between the parties that the plt. should have a share of the commission on orders introduced by the plt. and executed by the defts. The plt. had a seat in the defts.' office, and was paid by commission, and not by salary, for helping to carry out the business in the office. The plt., having left the defts.' service, brought an action against them to recover a share of the commission earned by them on transactions which they, as brokers, had entered into after he had left their service on behalf of persons whom he had introduced to them during that service:—

*Held*, that the agreement was one which gave rise to the relationship of employment, and that as there was no evidence that the parties had agreed that commission was to be paid for an indefinite period after the employment should cease, the plt. was not entitled to commission on orders given after the termination of his employment, but that where during his employment orders had been given to open and carry over stocks, the plt. was entitled to commission on those transactions until they were closed. **BICKLEY v. BROWNING, TODD & Co.**

**Pickford J. 30 T. L. R. 134**

*Principal and agent*—Country broker and client—Employment of country broker to purchase shares—Purchases effected through London broker from jobbers—Commission added to jobber's price—Total returned as "net price" to country broker—Charge of commission added to client on "price."

Where a country client has employed a country broker to purchase stocks and shares through a London broker, it is a question of fact in each case whether the London broker has acted as a broker and bought for his client, in which case he has complied with his mandate, though, in accordance with the practice of the Stock Exchange, he sends forward to the country broker a "net price," which includes the price paid by him to the jobber plus his commission, or whether he has acted as a principal selling to his client, not at the jobber's price plus a regular or reasonable remuneration for himself, but at an arbitrary price obtained by adding an arbitrary sum to the jobber's price.

**STOCK EXCHANGE**—continued.

A country client instructed a country broker to buy certain shares for him, and the country broker instructed London brokers, members of the London Stock Exchange, who acted for them, to buy the shares, and they bought the shares from a jobber, adding to the price paid by them to the jobber their own commission and returning it to the country broker as "net price." The country broker sent to the client a bought note stating the price, but omitting the word "net," and added his own commission; and this was the usual course of dealing in other purchases or sales of shares.

In an action by the country client to recover from the country broker the sums paid by him on the ground that the way in which the London brokers had returned net "prices" had made them vendors and not brokers, it was found as a fact that the London brokers had acted as brokers and not as principals:—

*Held*, upon the authority of *Aston v. Kelsey* [1913] 3 K. B. 314, that the plaintiff was not entitled to recover. **BLAKER v. HAWES AND BROWN**

**Scrutton J.**

**109 L. T. 320; 29 T. L. R. 609**

*Principal and agent*—Death of client before settling day—Open account—Duty of broker—Reduction of amount of client's indemnity—Closing account—Taking over of client's shares by broker at a valuation—Liability of broker to account.

Where there is an open account between a broker and his client, the broker is entitled, on the death of the client, to close the account at once and to sell all shares in respect of which he has entered into contracts on behalf of the client. Although the broker cannot properly sell the shares to himself, yet, when the circumstances are such that an immediate sale upon the market would be detrimental to the interests of the client's estate, the broker may, if he pleases, take over the shares at a valuation based on the market prices of the day, provided that by so doing the estate of the client is not prejudiced.

*Decision of Warrington J. [1913] 1 Ch. 247, affirmed.*

*Walter & Gould v. King* (1897) 13 T. L. R. 270; *Macoun v. Erskine, Owenford & Co.* [1901] 2 K. B. 493; and *Erskine, Owenford & Co. v. Sachs* [1904] 2 K. B. 504, followed.

*Ellis v. Pond* [1898] 1 Q. B. 426, distinguished. *In re FINLAY, Cf. S. WILSON & Co. v. FINLAY* - C. A. [1913] 1 Ch. 565; 82 L. J. (K. B.) 295; 108 L. T. 699; [1913] W. N. 114; 29 T. L. R. 436; 57 S. J. 444

*Principal and agent*—Right of broker to indemnity from client.

The plt., a country stock and share broker, was employed by the deft. as his broker to make purchases of shares for him subject to the rules, regulations, and customs of the stock exchanges through which the transactions took place. The plt. gave orders for the purchase of the shares to brokers on the London and Glasgow Stock Exchanges, who thereupon bought the shares from a jobber, and sent a bought note to the plt. charging "7s. 6d. net" for the shares,

**STOCK EXCHANGE**—*continued*.

the price at which they bought from the jobber not being disclosed. The plt. then sent a bought note to the deft., charging him 7s. 6d. for the shares (without adding the word "net") plus a commission of 1½d. per share and 1s. for the stamp. The amount added by the London and Glasgow brokers for their remuneration did not exceed the usual commission payable in respect of such a purchase. In an action brought by the plt. against the deft. for an amount alleged to be due to him in respect of the above-mentioned transactions:—

*Held* by Hamilton L.J. and Bray J. (Vaughan Williams L.J. *dubitante*), that the contracts effected by the plt. were made through the London and Glasgow brokers as agents and were not made with them as principals, that they were accordingly in accordance with the authority given to the plt. by the deft., and that the plt. was therefore entitled to be indemnified by the defendant in respect of them.

*Johnson v. Kearley* [1908] 2 K. B. 514, distinguished: *ASTON v. KELSEY* C. A. [1913] 3 K. B. 314; 29 T. L. R. 530

**STREAM**—Artificial watercourse—Mill stream—Riparian proprietors—Common owner—Easement—Presumption from user—General works.  
*See* WATER.

—Pollution—Injunction—Court of Appeal.  
*See* RIVER—Pollution.

**STREETS.**

*See* HIGHWAY, LOCAL GOVERNMENT, NUISANCE, and LONDON.

**STRIKE**—Carriage of goods—Reasonable time for delivery—Strike of railway company's servants—Perishable goods—Sale by agent of necessity.  
*See* RAILWAY—Carriage of Goods.

—Shipping.  
*See* SHIPPING.

—Workmen's compensation—"Grade"—Dock strike—Strike breaker.  
*See* WORKMEN'S COMPENSATION—Compensation—Assessment.

**STRIKING OUT**—Pleadings—Alleged right of way—Action by landowner for trespass—District council added as defendants—Pleadings—Motion to strike out defence of district council as embarrassing.  
*See* PLEADINGS.

**SUB-CHARTER**—Shipping.  
*See* SHIPPING.

**"SUBJECT" OF COLONY**—Colonial judgment—Defendant born in Colony—Defendant not resident or domiciled there—Enforceability of judgment.  
*See* FOREIGN JUDGMENT.

**SUB-LEASE.**

*See* LEASE.

**SUBSIDENCE**—Waterworks—Breaking up streets—Laying water pipes therein—Subsequent subsidence of street—Cost of repair—Compensation.  
*See* LOCAL GOVERNMENT.

**SUBSOIL**—Ownership—Highway—Dedication—Gas pipes—Power to gas company to break up street.  
*See* HIGHWAY—Dedication.

**SUCTION**—Ship—Collision—Overtaking or overtaken vessels—Crossing vessels—Suction or interaction—"Swerve."  
*See* SHIPPING.

**SUMMARY JURISDICTION**—Justices.  
*See* JUSTICES.

**SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895.**  
*See* DIVORCE—Desertion.

**SUMMONS**—Foreclosure.  
*See* SERVICE.

—Interpleader summons.  
*See* BANKRUPTCY—Act of Bankruptcy.

**SUPERANNUATION**—*New South Wales—Civil Service—New South Wales Civil Service Act, 1884, Part V.—Public Service Acts of 1895 and 1902—Public Service (Superannuation) Act, 1903, s. 2 (b)—Construction—Rights of officer in the Civil Service on superannuation—Appeal from New South Wales.*

Under the provisions of Part V. of the New South Wales Civil Service Act, 1884, the respondent, an officer in the Civil Service, was entitled at any time after the age of sixty to retire therefrom upon the superannuation allowance provided by the Act and payable out of the fund constituted thereby. Such right is absolute and in the absence of express provisions in the Act cannot be conditioned on his giving notice to the Crown of his retirement, nor suspended during his membership of the Public Service Board under the Public Service Acts of 1895 and 1902 which he had accepted after retirement.

The superannuation fund having been exhausted:—

*Held*, that under s. 2 (b) of the Public Service (Superannuation) Act, 1903, the allowances payable thereout should be paid from the Consolidated Revenue Fund. *WILLIAMS v. DELOHERY* P. C. [1913] A. C. 172; 82 L. J. (P. C.) 73; 107 L. T. 775; 29 T. L. R. 161

*Officers—Metropolis—Superannuation allowance—Meaning of "existing officer" of New River Co.—"Dismissal"—Discretion of Metropolitan Water Board as to amount of allowance—Superannuation (Metropolis) Act, 1866 (29 Vic. c. 31), ss. 1, 4—Metropolis Water Act, 1902 (2 Edw. 7, c. 41), s. 47.*

The plt., originally an assistant engineer of the New River Co., continued to hold that office under their successors, the Metropolitan Water Board, from 1902 to 1910, when he was informed by letter that the works under the Staines Reservoir Act, 1896, and the New River Co.'s Act of 1897, having been completed, his services



**SUPERANNUATION**—*continued.*

would not, after the expiration of three months, be required. The Board had determined, and their decision had been upheld by the Treasury, that the plt. was not entitled to compensation for loss of office under s. 47 of the Metropolis Water Act, 1902; and he therefore claimed a superannuation allowance under sub-s. 10 of that section. It was found as a fact upon the evidence that no limitation of his employment had been communicated to him when originally engaged by the New River Co., and that no limitation had been imposed upon the authority of the chief engineer of that co. who had engaged him:—

*Held*, that the plt. was entitled to a superannuation allowance, as having been "dismissed" on a ground other than misconduct; and that even if his original employment had been of a temporary character and had ipso facto come to an end on the completion of specific works, there was nothing in sub-s. 10 of s. 47 to limit the rights of existing officers or servants to such of them as were permanently employed; but that as sub-s. 10 enacted that an existing officer upon ceasing to hold office was to be entitled to a superannuation allowance "upon the terms and conditions and according to the scale specified in the Superannuation (Metropolis) Act, 1866," the amount of the plt.'s superannuation allowance was in the discretion of the Water Board.

*Reg. v. St. Pancras Vestry* (1890) 24 Q. B. D. 371; 59 L. J. Q. B. 244, followed and applied. **WEBSTER v. METROPOLITAN WATER BOARD**

**Avory J. 10 L. G. R. 1025; 76 J. P. 474**

**SUPER-TAX**—Income tax—Assessment under Sched. D for previous year not conclusive for purposes of super-tax.

*See* **REVENUE.**

—Income tax—Partner—Share of profits of partnership business—Method of assessing partner to super-tax.

*See* **REVENUE.**

**SUPPORT**—Minerals—Railway—Mines lying outside the forty yards limit.

*See* **RAILWAY.**

**SURETY**—Principal and.

*See* **PRINCIPAL AND SURETY.**

**SURGEON**—Workmen's compensation—Certifying surgeon—Refusal to give certificate—Appeal to medical referee—Jurisdiction.

*See* **WORKMEN'S COMPENSATION.**

**SURNAME**—Trade mark—Registration.

*See* **TRADE-MARK—Registration.**

**SURVIVORSHIP**—Wills—Probate—Practice—

Two persons dying together—Husband and wife—Form of oath to lead grants.

*See* **PROBATE.**

**"SWERVE"**—Ship—Collision—Overtaking and overtaken vessels—Crossing vessels—Suction or interaction.

*See* **SHIPPING—Collision.**

**TAXATION**—Solicitors' costs.

*See* **SOLICITOR.**

**TAXES**—Inland Revenue.

*See* **REVENUE.**

**TECHNICAL WORDS**—Will—Legal devise—

A. and "his issue male in succession"

—Words of explanation.

*See* **WILL.**

**TELEGRAPH**—Placing posts and wires in or across street or public road—Consent of body "having the control of such street or public road."

—Highway not repairable by inhabitants at large—*Telegraph Act, 1863* (26 & 27 Vict. c. 112), s. 12.

Appeal from a decision of the Railway and Canal Commrs. [1913] 3 K. B. 451; [1913] W. N. 249.

The Postmaster-General being desirous of placing telegraph posts and wires in, along, and across a street or public road in an urban district, being a public highway not repairable by the inhabitants at large, required the U. D. C. to give their consent thereto, under s. 12 of the *Telegraph Act, 1863*. It was admitted that the highway was a "street," which the council could require the frontagers to make good under s. 150 of the *Public Health Act, 1875*.

The Railway and Canal Commrs. held that the council, not being liable to repair the road, were not the body "having the control of it" within the meaning of s. 12.

The Postmaster-General appealed.

The C. A. affirmed the decision of the Railway and Canal Commrs. and dismissed the appeal. **POSTMASTER-GENERAL v. HENDON U. D. C.**

**C. A. [1913] W. N. 371; 30 T. L. R. 171**

—Railway and Canal Commission—Appeal—Competency—Reference relating to telephones—*Telegraph (Arbitration) Act, 1909.*

*See* **APPEAL.**

**TELEPHONE**—Railway and Canal Commission

—Appeal—Competency—Reference relating to telephones—*Telegraph (Arbitration) Act, 1909.*

*See* **APPEAL.**

*Transfer of National Telephone Co.'s property to Postmaster-General*—"Value of undertaking taken over."

By the agreement by which the Postmaster-General acquired, as from Dec. 31, 1911, the undertaking of the National Telephone Co., it was, inter alia, provided that "the value on December 31, 1911, of all plant, land, buildings, stores, and furniture purchased by the Postmaster-General . . . shall be the then value (exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatever) of such plant, land, buildings, stores, and furniture, having regard to its suitability for the purposes of the Postmaster-General's telephonic service, and in determining the value of any plant no advantage arising from the construction of such plant, by leave of the Postmaster-General, upon any railway or canal over which the Postmaster-

**TELEPHONE**—*continued*.

General possesses exclusive rights of way for telegraphic lines shall be taken into account":—

*Held*, that the value of the plant taken over by the Postmaster-General was to be arrived at by taking the cost of construction, less depreciation, and that every expense which was necessary to construct the plant was an element to be considered, including in such expense (inter alia) the reasonable costs of obtaining subscribers' agreements which were in force at the date of the transfer, and also (Sir James Woodhouse dissenting) the cost of raising capital necessary to construct the plant.

*Held*, further, that the method of depreciation applicable was to take the value as reduced in the ratio which the age bore to the life of the plant, and that the mode of computing the life of the plant was to take its physical life as reduced somewhat in respect of defects and obsolescence of certain classes of the plant. **NATIONAL TELEPHONE CO., LD. v. POSTMASTER-GENERAL** - Rail. and Can. Com. [1913] 2 K. B. 614; 29 T. L. R. 190

*Note*

An appeal from this decision was brought but was compromised, 29 T. L. R. 624.

See also **APPEAL—Railway and Canal Commission**.

**TENANT**—Landlord and.

See **LANDLORD AND TENANT**.

**TENANT FOR LIFE**.

See **SETTLED LAND**.

**TENANTS IN COMMON**—Practice—Inspection of property—"Building in possession of party to action."

See **COUNTY COURT**.

**TENDER**—Building in street—Notice—Compensation—Payment or tender—Refusal to set back—Mandatory injunction to pull down.

See **STREETS**.

**THELLUSSON ACT**.

See **WILL—Accumulate, Directions to**.

**THIRD PARTY**—Shipping—Collision—Towage—Damage to cargo—Indemnity claimed from third party—Construction of contract—Implied term.

See **SHIPPING—Collision—Tug and Tow**.

—Workmen's compensation—Claim for indemnity by employer against third party—Omission to serve notice of claim.

See **WORKMEN'S COMPENSATION—Indemnity**.

**THIRD PERSON**—Malicious act of—Action for negligence—Proximate cause of damage—Reasonable precautions—Overflow of water from lavatory in upper floor.

See **NEGLIGENCE**.

**THREATS**—Patent—Action to restrain threats—Staying threats action pending decision of infringement action—Costs.

See **PATENT—Threats Action**.

**TIMBER**—Income tax assessment—Profits derived from cutting and selling timber—New Zealand Land and Income Assessment Act, 1908, ss. 71, 79, 87.

See **REVENUE—Income Tax**.

—Ontario Crown Timber Act, 1897—Ontario Execution Act, 1909.

See **CANADA—Ontario**.

**TIME**—Appeal—County court action—Appeal from county court—Appeal from judgment of Divisional Court on such appeal—Final order.

See **APPEAL—Court of Appeal**.

—Contract—Time of the essence of.

See **SHIPPING—Charterparty—Redelivery and FORFEITURE**.

—Lapse.

See **LIMITATIONS, STATUTES OF**.

—Marriage settlement—After-acquired property, Covenant to settle—Lapse of time.

See **SETTLEMENT—Covenant to Settle**.

—Shipping.

See **SHIPPING—Charterparty and Collision**.

—Vendor and purchaser—Sale of land—Contract—Specific performance.

See **FRAUDS, STATUTE OF**.

—Workmen's compensation—Seaman—Time for taking proceedings—Absence from the United Kingdom.

See **WORKMEN'S COMPENSATION**.

**TIME CHARTER**—Shipping.

See **SHIPPING—Charterparty**.

**TITHE RENT-CHARGE**.

*Contract*, col. 634.

*Mistake*, col. 634.

*Recovery*, col. 635.

*Transfer of Townships*, col. 635.

**Contract**.

*Contract by occupier to pay to owner of land sums paid by him on account of—Void contract—Tithe Act, 1891 (54 & 55 Vict. c. 8), ss. 1, 2.*

A contract made after the passing of the Tithe Act, 1891, by which an occupier of land agrees to pay to the owner thereof sums which the owner shall pay in respect of tithe rent-charge issuing out of the land, is void by reason of the provisions of the Tithe Act, 1891, s. 1, sub-s. 1.

So held by Vaughan Williams L.J. and Kennedy L.J., Buckley L.J. dissenting.

Judgment of Bray J. (following *Lord Ludlow v. Pike* [1904] 1 K. B. 531) affirmed. *TUFF v. GUILD OF DRAPERS OF THE CITY OF LONDON* C. A. [1913] 1 K. B. 40; 82 L. J. (K.B.) 174; 107 L. T. 635

**Mistake**.

• *Money paid under mistake of fact—Right to recover—Principal and agent—Tithe—Bankruptcy of incumbent—Sequestration of benefice—Tithes paid under mistake of fact to sequestrator appointed by bishop—Payment by bishop to trustee in bankruptcy—Liability of bishop to refund—*

**TITHE RENT-CHARGE (Mistake)—continued.**

*Bankruptcy Act*, 1883 (46 & 47 Vict. c. 52), s. 52  
*Tithe Act*, 1891 (54 & 55 Vict. c. 8), s. 1;  
 s. 10, sub-s. 2.

Where tithe rent-charge was paid by the plds. under a mistake of fact to the sequestrator of a benefice appointed by an order made by the bishop under s. 52 of the *Bankruptcy Act*, 1883, and was received and applied by the bishop, who had no notice of the mistake, first in providing for the spiritual needs of the benefice, and then in payment of the balance to the trustee in bankruptcy of the incumbent:—

*Held*, that the bishop, as between himself and the plds., was in the position of a principal, and as such was liable to repay the amount so received and applied by him.

Decision of *Neville J.* [1912] 2 Ch. 318, affirmed. *BAYLIS v. BISHOP OF LONDON - C. A.*  
 [1913] 1 Ch. 127; 82 L. J. (Ch.) 61;  
 107 L. T. 730

— Payment of tithe rent-charge by tenant.

*See* LIMITATIONS, STATUTES OF—  
 Tenancy.

**Recovery.**

*Distress or receiver—Owner in occupation of part only of the lands—Tithe Act*, 1836 (6 & 7 Will. 4, c. 71), s. 12—*Tithe Act*, 1891 (54 & 55 Vict. c. 8), s. 2.

Sub-s. 2 of s. 2 of the *Tithe Act*, 1891, which provides that tithe rent-charge issuing out of any lands shall, when “the lands are occupied by the owner thereof,” be recovered by distress, applies only when the owner is in occupation of the whole of the lands. *ECCLIASTICAL COMMISSIONERS v. UPJOHN - Div. Ct.*  
 [1913] 1 K. B. 501; 82 L. J. (K. B.) 435;  
 108 L. T. 417; [1913] W. N. 29

**Transfer of Townships.**

*Transfer of townships from one parish to another—Provision as to fees for “marriages, churchings, and burials, and other ecclesiastical dues, offerings, and emoluments”—Construction.*

In 1909 it was proposed for ecclesiastical purposes to transfer certain townships from the parish of E. to the parish of I., and a scheme was accordingly drawn up under s. 26 of the *Pluralities Act*, 1838, and subsequently approved by Order in Council. The scheme provided that “the incumbent of the said parish of I. shall have exclusive cure of souls within the limits of the said districts now part of the parish of E., and proposed to be annexed to the parish of I., and the fees for marriages, churchings, and burials, and other ecclesiastical dues, offerings, and emoluments arising from the said districts shall thenceforth belong to the incumbent of the said parish of I., to which such districts shall have been so annexed. That no alteration shall be made as to the patronage or (save as aforesaid) the endowments of any of the benefices affected by this scheme”:—

*Held*, that the words of the scheme “other ecclesiastical dues, offerings, and emoluments” did not include tithes.

Decision of *Div. Ct.*, 108 L. T. 461, affirmed. *BOLAM v. ALLGOOD - C. A.* 30 T. L. R. 46;  
 58 S. J. 46

**TITLE**—Settlement—Settled land—Power of appointment—Sale—Compound settlement—Trustees.  
*See* SETTLED LAND—Trustee.

**TOBACCO**—Moisture—Sample.  
*See* REVENUE—Excise.

— Trade Mark.

*See* TRADE MARK—Registration.

**TORT**—Joint tort—Several defendants—Form of judgment—Libel—Privileged occasion—Trade protection.  
*See* DEFAMATION.

— Trade union—Action of tort—Competency—Trade disputes.  
*See* TRADE UNION.

**TOWAGE**—Shipping—Collision—Damage to cargo—Indemnity from third party—Construction of contract—Implied term.  
*See* SHIPPING—Collision—Tug and Tow.

**TRADE**—Loss of—Measure of damages.  
*See* SALE OF GOODS.

— Protection—Libel—Privileged occasion—Mutual society—Joint tort—Several defendants—Form of judgment.  
*See* DEFAMATION.

— Restraint of.

*See* CONTRACT AND RESTRAINT OF TRADE.

**TRADE DISPUTES.**

*See* TRADE UNION.

**TRADE MARK.**

*Abandonment*, col. 636.

*Infringement*, col. 637.

*Registration*, col. 639.

**Abandonment.**

*Action for infringement of trade mark and passing-off—Trading name—Registered trade mark—Mental infirmity of trader—Receiver appointed under Lunacy Act to carry on and realize business—Business discontinued—Lease of premises granted to another trader carrying on a different business—Plant and other assets sold—Whether goodwill of business abandoned—Trade mark defensible with goodwill—“Persons aggrieved”—Trade Marks Act*, 1905, ss. 22, 35, 37.

In the year 1893 the plt. first adopted for his trade of a jam and marmalade manufacturer the name of S. O. & Co. In Feb., 1894, trading as S. O. & Co., he registered a trade mark containing that signature and name stating that the essential particular of the trade mark was the copy of the written signature “S. O. & Co.” and the applicants disclaimed any right to the exclusive use of the added matter, except in so far as it consisted of their name. In consequence of the plt.’s mental infirmity, on Jan. 10, 1908, J. M. was appointed receiver under the *Lunacy Act*, 1890, with liberty to carry on the business. In Dec., 1909, pursuant to an order in lunacy directing a sale, the plt.’s business, including the lease, plant, and goodwill, was put up for sale by

**TRADE MARK (Abandonment)—continued.**

auction, but was not then sold. The premises were subsequently leased to a manufacturer of perfumery, and by the receiver's instructions the plant, stock, pots and jars, and trade labels of the business were sold by auction in April, 1910. A circular to the debtors to the firm asking for payment was sent out, the account books burnt, and all the employees discharged. The plt. had not since carried on business under the name of S. O. & Co. In Jan., 1913, the defts., manufacturers of marmalade, having obtained, as they alleged, from the receiver his assent to the use of a marmalade label containing the words "Prepared by the practical manager of S. O. & Co.," commenced to advertise and sell marmalade under labels in which "S. O." was prominent. The plt. brought an action for an injunction restraining the defts. from selling their jam or marmalade as "S. O." jam or marmalade, and from using labels which were colourable imitations of the plt.'s trade mark or any other labels in which the name "S. O. & Co." or "S. O." was prominent. The defts. as aggrieved persons moved to expunge the trade mark from the register:—

*Held*, that the plt.'s business came to an end in Mar., or at latest in April, 1910, and that the goodwill thereof determined when the business was discontinued; that the trade mark went with the goodwill, and that there were no rights remaining in the plt. enabling him to maintain the action, which failed and must be dismissed with costs.

*Held*, also, that the trade mark not being now attached to the goods in respect of which it was registered, and having no goodwill to support it, was a danger to the trading community which the applicants, or any trader desiring to adopt the name it contained in his trade, were "as aggrieved persons" entitled to have removed from the register under ss. 22 and 35 of the Trade Marks Act, 1905.

The action was dismissed with costs, and an order was made to expunge the trade mark from the register with costs. *PINK v. J. A. SHARWOOD & Co., LD. In re REGISTERED TRADE MARK (No. 178,510 of 1894) OF SIDNEY ORD & Co. Eve J. 30 R. P. C. 725; 109 L. T. 594*

**Infringement.**

*Passing-off—Letter marks used on steel—Trade marks used as quality marks—Registration—Application to rectify the register—Trade Marks Act, 1905, ss. 11, 37, 41.*

A. & Co. were the owners of four registered trade marks in class 5 for steel, namely, "A" in the device of a diamond, "B" in a similar device, "C" in a similar device, and "A B" each in a similar device. The first three marks were registered in 1884 as old marks, and the fourth in 1885 as a new mark. All four had been in use ever since they had been respectively registered. These marks were admittedly used as quality marks, all A. & Co.'s steel bearing a further mark, which was their house mark and consisted of a hand bearing a scimitar with the word "Toledo" upon it. A. & Co. were a well-known firm of high standing in the trade. K.,

C.C.D.

**TRADE MARK (Infringement)—continued.**

having shortly before started in business under a firm name, began in 1909 to use a mark consisting of the letters "A B C" in a device consisting of a representation of interlocked sections of steel. In Jan., 1910, A. & Co. became aware of this, and in June of that year they applied to the Cutlers' Co. for registration of a mark consisting of the letters "A B C" in a triple diamond as an associated mark. The deft. unsuccessfully opposed this application, which was granted; he thereupon appealed by motion to the High Court. In Jan., 1912, before the appeal had been heard, A. & Co. commenced an action against K. for an injunction. Leave was given to A. & Co. to amend and to the deft. to issue forthwith a notice of motion to rectify the register by removing A. & Co.'s marks therefrom. The action and the two motions were heard together. As regards the motion to rectify, it was held that the fact that the marks had been used as quality marks was immaterial, and that there had been bona fide user of the marks by A. & Co. within the meaning of s. 37 of the Trade Marks Act, 1905, and that, having regard to s. 41 of that Act, the motion was out of time, being after the expiration of seven years from the passing of that Act, and must therefore be refused with costs. As regards the action, it was held that A. & Co. were entitled to an injunction to restrain infringement and passing off and to the costs of the action. As regards the deft.'s appeal from the decision of the Cutlers' Co. allowing A. & Co. to register "A B C" in a triple diamond as an associated mark, it was held that the decision of the Cutlers' Co. was correct, and that the appeal must be dismissed with costs. The deft. appealed:—

*Held* by the C. A., as regards the action, that there had been no infringement and no passing-off by the deft., and that the action must be dismissed with costs, including the costs of the appeal. As regards the deft.'s motion to rectify, it was held that in so far as it was directed to impeaching the original registration of the plt.'s marks, the motion was out of time having regard to s. 41 of the Trade Marks Act, 1905, and failed; that it also failed, in so far as it impeached the use of the plt.'s "A," "B" and "A B" marks since their registration, because, although those marks had been used as quality marks, they had not ceased to be used as trade marks; but that in respect of the plt.'s "C" mark the motion succeeded and that that mark should be struck off the register for non-user in accordance with the power given to the Court in that behalf by s. 37 of the Trade Marks Act, 1905. No costs were given on this part of the case.

As regards the deft.'s appeal from the decision of the Cutlers' Co. allowing the plt. to register "A B C" in a triple diamond, it was held that, having regard to the deft.'s user of his "A B C" mark, such registration would be calculated to deceive and should not be allowed, and the deft.'s appeal was allowed with costs. *JOHN H. ANDREW & Co., LD. v. KUEHNLEIGH. In re KUEHNLEIGH'S APPLICATION AND In re JOHN H. ANDREW & Co., LD.'S APPLICATION - C. A. 30 R. P. C. 677; 29 T. L. R. 771*

**TRADE MARK (Infringement)—continued.**

*Passing-off — "Mendine" — "Mendit" — Similarity, whether calculated to deceive—Alleged acquiescence by plaintiff.*

The plt. in the action was the owner by assignment of two trade marks for an adhesive substance consisting of the word "Mendine," registered respectively on Nov. 9, 1902, and Mar. 16, 1903, in classes 1 and 50, the right to the exclusive use of the word "Mendit" being disclaimed. The trade marks had been used and advertised in connection with an article called "Mendine" since 1903. The business in "Mendine" was, with the goodwill and trade marks, taken over by the plt. in Mar., 1911. The plt. had extensively advertised "Mendine," and had also sold considerable quantities of it in bulk and in metal collapsible tubes affixed to cards. In Mar., 1908, a business of manufacturing and selling another adhesive preparation under the name of "Mendit" was commenced, and was being carried on by the defts. when the action was brought. The defts.' preparation was also sold in collapsible tubes and had been considerably advertised. In Nov., 1911, the defts. were threatened with a passing-off action by the plt.'s predecessors. Their solicitor was instructed to defend their use of "Mendit," but no proceedings were then taken against them. The plt. in 1913 commenced an action to restrain the deft. co. from infringing his trade marks and from selling an adhesive preparation under the name of "Mendit," or so got up as to enable it to be passed off as the plt.'s "Mendine." The defts. denied the infringement and passing-off and that "Mendine" was descriptive of the plt.'s goods. They also alleged that the plt.'s right to relief was barred by delay and acquiescence:—

*Held*, assuming that had both "Mendine" and "Mendit" been registered trade marks, there would not be any risk of confusion by persons taking ordinary care who read or heard both words; and, further, that the evidence did not support the view that confusion had in fact arisen between the two words, and that the action, so far as based on infringement of trade mark, must be dismissed.

*Held*, as to passing-off, that there had been no deliberate passing-off by the defts., and that even assuming the plt. had established a right of property in the name "Mendine" (which the Court was of opinion that he had not) he had not proved that the defts. had done or threatened to do anything which was an infringement of such right.

The action was dismissed with costs. **COOMBE v. MENDIT, LD.** - - **Eve J. 30 R. P. C. 709**

**Registration.**

*Deceptiveness—Mark refused as calculated to deceive—Appeal to Court—Application ordered to proceed.*

Application was made for the registration, in respect of gin, of a label containing the representation of a cat in a sitting posture holding a glass in its paws and having on its words "Cordial Old Time Gin—'Snowdrop' Trade Mark." "Snowdrop" was a registered trade mark of the applicants. The application was refused at a hearing on the ground that the mark

**TRADE MARK (Registration)—continued.**

was calculated to deceive having regard to a cat and barrel mark on the register. The applicants appealed, and said that a cat was common to the trade in gin, and offered to disclaim the right to the exclusive use of a cat; they had made the same offer to the Comptroller:—

*Held*, that the application ought to be ordered to proceed. *In re AN APPLICATION BY BAGOTS, HUTTON & CO., LD., FOR THE REGISTRATION OF A TRADE MARK* - - **Warrington J. 29 R. P. C. 702**

*Deceptiveness — Similar terminations — "Egen," "ogen"—Deception, Probability of—Similarity in sound—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 11, 35.*

The applicants, who had been for some time the registered proprietors of trade marks in respect of medicines and foods consisting of the words "Ceregen," registered in class 42, and "Zoegen," in classes 3 and 42, applied to expunge the respondents' trade mark "Herogen," registered in class 42, in April, 1912, on the grounds of the deception and confusion which would probably arise from the similarity of the applicants' and respondents' marks in sound and termination. The respondents alleged that no confusion was likely to arise, nor were their goods liable to be passed off for those of the applicants:—

*Held*, that the real point was whether "Herogen" and "Ceregen" were, in ordinary use, so similar as to be calculated to bring about deception; that the letters which preceded the termination were the letters upon which the would-be purchaser would rely; that the articles appealed to quite different classes of customers; and that the application to rectify failed and must be dismissed with costs. *In re "HEROGEN" TRADE MARK OF THE BRITISH DRUG HOUSES, LD.* - **Eve J. 30 R. P. C. 73; 107 L. T. 756**

*Deceptiveness—Words with similar terminations—Calculated to deceive—Registration allowed—Appeal to the Court dismissed.*

On an application to register the word "Limit" as a trade mark in respect of collars and shirts, the application was opposed by the owners of the trade mark "Summit" registered in respect of collars and shirts on the ground that its similarity would lead to deception. The Comptroller allowed the registration. The opponents appealed to the Court:—

*Held*, that the words "Limit" and "Summit" were words in common use, each conveying a perfectly definite idea; that there was no possibility of any one being deceived by the two marks; and that there was no ground for refusing registration. The appeal was dismissed with costs. *In re AN APPLICATION TO REGISTER A TRADE MARK BY THOMAS A. SMITH, LD.* - **Neville J. 30 R. P. C. 363**

*Deceptiveness — "Zarna" — Registration for corsets—Subsequent registration for bandages—Removal of subsequent registration—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 11, 19.*

The applicants registered the word "Zarna" in class 13 for metal used in corsets. The respondent subsequently, without any knowledge

**TRADE MARK (Registration)—continued.**

of the applicants' trade mark, registered the same word in class 30 for *bandeaux* without the knowledge of the applicants. The applicants moved to have the respondent's trade mark expunged:—

*Held*, that the Court was not bound by the classification adopted in the registry, that the respondent's goods were of the same description as those of the applicants, both being articles of clothing, that the respondent's trade mark was calculated to deceive, and that it must be removed from the register. *In re SHREEVE'S TRADE MARK* — — — **Eve J. 30 T. L. R. 164**

*Descriptive word—"Ribbon"—Word having direct reference to the character or quality of the goods—Application refused—Appeal dismissed—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 4.*

An application was made to register the word "Ribbon" in class 48 in respect of a dentifrice. The applicants contended that the word was one which had no direct reference to the character or quality of the goods. It was intended to be used in connection with a dental cream sold as "Ribbon Dental Cream," and on the carton, in which the cream was sold, were the words "Comes out a ribbon" and "Lies flat on the brush." It was held by the Comptroller, that the word had a direct reference to the character and quality of the goods. The applicants appealed:—

*Held*, that it was shewn by the manner in which the applicants put up their goods that the word was descriptive of the form of the goods and had direct reference to their character and quality. The appeal was dismissed. *IN RE COLGATE & CO.'S APPLICATION*

**Parker J. 30 R. P. C. 262; 29 T. L. R. 326**

*Distinctive mark—Initial letters—User—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 3; s. 9, sub-s. 5.*

Motor cab proprietors in London applied for registration as trade marks for motor vehicles of two marks used by them for about three years on and in connection with their motor cabs in London. One mark consisted of the letters "W" and "G" (joined by the copulative symbol "&") written in a running hand with a distorted tail to the "G" ending up under the "W." The other mark consisted of "W & G" in ordinary block letters. These marks had become in fact distinctive in the London district but not elsewhere. The registrar refused the applications:—

*Held*, that the marks were not distinctive within the meaning of the word in s. 9, sub-s. 5, of the Trade Marks Act, 1905, and were therefore not registrable.

Decision of the C. A. [1912] 1 Ch. 644, varied. *REGISTRAR OF TRADE MARKS v. W. & G. DU CROS, LD.* — — — **H. L. (E.) [1913] A. C. 624; 30 R. P. C. 660; [1913] W. N. 268; 29 T. L. R. 772**

*Distinctive mark—Motion to expunge two trade marks of the plaintiffs—Deceptiveness—Trade marks expunged and action dismissed—Trade Marks Act, 1905, s. 11, 35.*

The plt. co., who were the proprietors of the letters patent for the well-known "Bowden Wire"

**TRADE MARK (Registration)—continued.**

used in connection with the transmission of power for cycle and motor cycle brakes, in 1901 promoted the deft. co., and transferred to it that part of their business which was concerned with brakes for pedal cycles only. In 1903 the plt. co. registered a trade mark in class 13 for brakes for velocipedes consisting of a picture of a coil of wire with the word "Bowden" enclosed therein, and they granted a licence to the deft. co. to use this mark in connection with brakes for pedal cycles. The licence was limited to the continuance of the letters patent. In 1904 the plt. co. registered the same trade mark in class 13 in respect of component parts, attachments, and accessories (other than brakes) of velocipedes, &c. The directors of the two cos. were substantially the same, until shortly before the commencement of the action. On the expiration of the letters patent the deft. co. continued to use the mark not only on brakes for pedal cycles but also in respect of brakes for motor cycles, which they then began to manufacture. The plt. co. brought an action to restrain the deft. co. from using the trade marks on any goods manufactured by them. The deft. co. contended that the licence was ineffective, and that the mark had been used by them for a great number of years not only with the knowledge but also with the concurrence of the plt. co. The deft. co. moved to expunge the trade marks, and alleged that they were not distinctive and that they were calculated to deceive. It was held by Swinfen Eady J. that the deft. co. had no general right to continue to use the trade mark after the term of the licence had expired, and no right to prevent the plt. co. from continuing to use the mark in the same manner as they had used it since the registration; also that the trade marks were distinctive and not deceptive, but, on the ground of non-user, an order should be made under s. 35, sub-s. 1, of the Trade Marks Act, 1905, varying the entry of the first-mentioned trade mark by restricting it to brakes for road vehicles other than velocipedes or cycles wholly propelled by the physical force of the rider. In the action an injunction against infringement of the trade marks, limited in accordance with the above-mentioned restriction, was granted with costs (30 R. P. C. 45). The plis. appealed:—

*Held*, that both trade marks must be removed from the register as not being distinctive and as being calculated to deceive. The action was dismissed. *BOWDEN WIRE, LD. v. BOWDEN BRAKE CO., LD. (No. 1). In re THE TRADE MARKS OF BOWDEN WIRE, LD.*

**C. A. 30 R. P. C. 580**

*Distinctive Mark—Surname—Application to register—Order of Board of Trade directing Registrar to proceed with application—Registration—Application to remove mark from register—Effect of order of Board of Trade—Passing-off—Action to restrain—Use by defendant of his own name—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5; ss. 35, 44.*

A preliminary order of the Board of Trade or the Court under s. 9, sub-s. 5, of the Trade Marks Act, 1905, directing the Registrar of Trade Marks to proceed with an application to register a surname as a trade mark merely enables

**TRADE MARK (Registration)—continued.**

the application to proceed as if it were an ordinary and not a special application, and is in no way final or conclusive so as to prevent the Registrar from subsequently refusing the application for registration on its merits, or to preclude the Court upon an application, after registration, by a person aggrieved under s. 35 from expunging the entry on the ground that the trade mark is not in fact distinctive.

Decision of Warrington J. [1913] 1 Ch. 191, reversed on this point.

A surname is not necessarily incapable of being a registrable trade mark. It may be registered, for instance, where it is an uncommon name and its user has been so extensive that it has in fact become distinctive, within s. 9 of the Trade Marks Act, 1905, for the goods with respect to which it is registered or proposed to be registered. Applications to register surnames ought, however, to be closely scrutinized, and registration only permitted where the distinctive character of the mark is clearly proved.

Teofani & Co., Ltd., and their predecessors in business had for more than twenty years traded in London as tobacco and cigarette manufacturers, and during that period had used the name "Teofani" as a trade mark to an extent which, in the opinion of the Court, made it in fact "distinctive" for cigarettes. The name was uncommon, there being only one person (A. Teofani) in the United Kingdom who bore it besides the predecessors in business of the co. In 1909 the co. obtained an order of the Board of Trade under s. 9, par. 5, of the Trade Marks Act, 1905, for the registration of the name "Teofani" as a trade mark.

On appeal from the refusal of Warrington J., on the application of A. Teofani, to order the removal of the mark from the register:—

*Held*, that the mark was properly registered.

The plts., Teofani & Co., Ltd., and their predecessors in business had for many years manufactured and sold cigarettes as "Teofani's cigarettes," under which description they had become well known to the trade and the public. In 1909 the plts. caused the name "Teofani" to be registered as their trade mark. In 1911 the deft., Athanasius Teofani, commenced to make and sell cigarettes under the description of "A. Teofani's cigarettes."

In an action to restrain passing-off and infringement of the plts.' trade mark Warrington J. granted an injunction restraining the deft. from selling or offering for sale cigarettes as "A. Teofani's cigarettes" or otherwise marking his goods with the name "Teofani," either with or without other names, without clearly distinguishing such cigarettes from those of the plts., and from infringing the trade mark:—

*Held*, on appeal, that the injunction was rightly granted. *TEOFANI & CO., LD. v. A. TEOFANI. In re TEOFANI & CO'S TRADE MARK C. A. [1913] 2 Ch. 545; 82 L. J. (Ch.) 490; 30 R. P. C. 446; 109 L. T. 114; [1913] W. N. 188, 230; 29 T. L. R. 674, 772; 57 S. J. 686, 728*

*Distinctive mark—Surname—"Boardman's"*  
—*Adapted to distinguish*—*User—Trade*

**TRADE MARK (Registration)—continued.**

*Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5; s. 44.*

Previous to 1868 R. J. Lea, a tobacconist, had supplied to one Boardman, a licensed victualler in Manchester, a tobacco mixture which became known and was asked for as "Boardman's" mixture. In 1868 R. J. Lea, with Boardman's sanction, began to sell this mixture to the public under a label bearing the words "Boardman's Smoking Mixture" in addition to other matter, including the name, address, and a trade mark device of R. J. Lea. This label was registered in 1887 as a whole for "tobacco being a smoking mixture." In 1910 R. J. Lea, Ltd., the successors in business of R. J. Lea, applied to register the word "Boardman's" under s. 9, sub-s. 5, of the Trade Marks Act, 1905, as a trade mark in respect of manufactured tobacco. There was evidence that, in a limited market among persons who knew and used the mixture, it was known and spoken of as "Boardman's," and that the word had been used as a trade mark in connection with goods for the purpose of indicating that they were the goods of the applicants. The application having been referred to the Court by the Board of Trade, it was dismissed by Joyce J. on the ground, *inter alia*, that a mere surname of an individual applicant, though it might be adapted to distinguish the goods of all the persons, taken collectively, who bore that surname from the goods of other persons bearing a different surname, was not adapted to distinguish the goods of the applicant from those of other persons within the meaning of that expression in the Act, and ought not, therefore, to be registered under s. 9, sub-s. 5. On appeal from that decision:—

*Held*, without deciding whether a surname was registrable *per se*, that on the evidence the word "Boardman's" was not "adapted to distinguish" the goods of the applicants from those of other dealers in tobacco, and was not therefore registrable as a "distinctive mark" within s. 9, sub-s. 5, of the Act.

Decision of Joyce J. [1912] 2 Ch. 32, affirmed. *In re AN APPLICATION OF R. J. LEA, LD., FOR REGISTRATION OF A TRADE MARK C. A. [1913] 1 Ch. 446; 82 L. J. (Ch.) 241; 30 R. P. C. 216; 108 L. T. 355; [1913] W. N. 69; 29 T. L. R. 334; 57 S. J. 373*

*Distinctive mark—Surname within device—Application refused by Comptroller—Appeal dismissed—Appeal to the Court of Appeal dismissed.*

Benz et Cie., who were a firm of motor car and cycle manufacturers in Germany, applied to register a trade mark consisting of the name "Benz" written in capital letters slightly distorted and enclosed in a circular device. The Comptroller-General refused the application on the ground that it was not sufficiently distinctive. The applicants appealed, and it was held by Joyce J. (1912) 29 R. P. C. 357, that the mark came under s. 9, sub-s. 5, of the Trade Marks Act, 1905 (5 Edw. 7, c. 15), and that it could not be regis-

**TRADE MARK (Registration)—continued.**

tered without an order of the Board of Trade or the Court; and held, further, that if it could be registered, there ought to be a disclaimer of the name "Benz." The applicants appealed to the C. A.:—

*Held*, that "Benz" was not the name, or at all events was not shewn to be the name, of a co. or individual within the meaning of par. 1 of s. 9 of the Trade Marks Act, 1905, and that, even if the mark were a device, the Comptroller had decided that it was not a distinctive device; that the mark was really the name "Benz" with commonplace embellishments, and that, the application not being a special one under par. 5, the word "Benz" must be treated as non-distinctive, and that the mark was not a distinctive mark within s. 9, sub-s. 5, of the Trade Marks Act, 1905. The appeal was dismissed with costs, and this was not to prevent the applicants making a fresh application asking for registration with disclaimer, or for an order that the word "Benz" should be deemed a distinctive mark. *In re APPLICATION OF BENZ ET CIE. TO REGISTER A TRADE MARK C. A. 30 R. P. C. 177; 108 L. T. 589; 29 T. L. R. 295; 57 S. J. 301*

*Invented word*—"Lactobacilline"—*Word having no direct reference to character of goods*—*User*—*Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 3, 9.*

*In re SOCIÉTÉ ANONYME LE FERMENT TRADE MARK APPLICATION C. A. 81 L. J. (Ch.) 724; 29 R. P. C. 497; [1912] W. N. 187; 28 T. L. R. 490; 107 L. T. 515*

*Use*—*Mark not presently intended for use in connection with goods in the United Kingdom*—*Appeal from Comptroller-General—Grounds of objection*—*Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 3, 12.*

A trade mark, to be within the definition in s. 3 of the Trade Marks Act, 1905, must be one which is used or proposed presently to be used in connection with goods of the owner of the mark dealt with by him in the United Kingdom.

The N. Co., which had in a canton of Switzerland the sole concession for working certain asphaltic mines and had a trade mark there, was bound by agreement with an English co., the V. de T. Co., to supply the latter with asphalt which it required for the United Kingdom and not to supply asphalt to any other person in the United Kingdom; and the agreement was to endure until 1926. The V. de T. Co. had registered in England a trade mark in connection with the asphalt sold by it. The asphalt supplied by the N. Co. was delivered in Switzerland to the V. de T. Co.:—

*Held*, that the N. Co. was not entitled to register a trade mark in England in respect of its asphalt during the continuance of the agreement.

On an appeal under s. 12 of the Trade Marks Act, 1905, from the refusal of the Comptroller-General to allow an application for registration of a trade mark to proceed, an opponent to registration who was not before

**TRADE MARK (Registration)—continued.**

the Comptroller-General but has been brought in for convenience on the appeal is not confined to the objections which have been relied on by the Comptroller-General. *In re NEUCHÂTEL ASPHALTE CO.'S TRADE MARK*

Sargant J. [1913] 2 Ch. 291; 82 L. J. (Ch.) 414; 30 R. P. C. 349; 108 L. T. 966; 29 T. L. R. 505; 57 S. J. 611

**TRADE NAME.**

*See PASSING-OFF.*

**TRADE SECRET**—*Secret process*—*Action to restrain divulging trade secrets and for infringement of copyright in illustrated catalogues*—*Agreement by ex-employee not to disclose trade secrets*—*Agreement by ex-employee and defendant company*—*No defence delivered by company*—*Trial of action*—*Injunction granted against both defendants.*

Litholite, Ltd., who were the makers of certain electrical insulators made of a substance the manufacture of which was secret, brought an action against Thomas Travis and a co. claiming an injunction to restrain them from disclosing to any person or persons the trade secrets or process of manufacture of the goods made by the plts. known as "Litholite." It appeared that the deft. Travis had been in the employment of the plt. co. and had entered into an agreement by which he undertook not at any time to disclose any of the trade secrets or processes of the plt. co. The plt. co. alleged that the deft. Travis had, since leaving their employ, formed the deft. co., which manufactured certain insulating bushes of the same material and by the same process of manufacture as that used by the plt. co., and that the illustrations in the plt. co.'s catalogues or illustrated price lists had been copied and used by the deft. co. Insulators, Ltd. The deft. Travis denied that the process of manufacture was a secret one. The defts. Insulators, Ltd., delivered no defence. The plt. co. obtained an interlocutory injunction. At the trial of the action neither of the defts. appeared, and an injunction was granted against both. *LITHOLITE, LTD. v. TRAVIS AND INSULATORS, LTD. - Joyce J. 30 R. P. C. 266, 532*

**TRADE UNION.**

*Trade Union Act Rules, 1913, dated Nov. 27, 1913, coming into operation forthwith. W. N. [1913] p. 461.*

*Maintenance. See MAINTENANCE.*

*Rules, col. 646.*

*Threat, col. 648.*

*Tort, Action of, col. 648.*

**Maintenance.**

—*Maintenance of suit*—*Common interest*—*Slander on officer as such*—*Action by officer*—*Indemnity by union against costs*—*Ultra vires.*

*See MAINTENANCE.*

**Rules.**

*Alteration of rules—Whether ultra vires.*

By the rules of a trade union it was provided that a delegate meeting should not have power to alter any rule, unless notice of the proposed alteration had been given:—



**TRADE UNION (Rules)—continued.**

*Held*, that this did not mean that a rule could not be altered unless notice of the identical alteration ultimately adopted had been given; it merely meant that notice of an intention to alter the rule must be given, and then the delegate meeting could by discussion alter it in the way they might there and then determine. **AMALGAMATED SOCIETY OF ENGINEERS AND OTHERS v. JONES AND OTHERS**

**Ballhache J. 29 T. L. R. 484**

*Parliamentary levies—Expulsion of member—Ultra vires—Injunction—Unregistered association—Parties—Trade Union Act, 1871 (34 & 35 Vict. c. 31), ss. 4, 6, 13—Trade Union Act, 1876 (39 & 40 Vict. c. 22), s. 8—Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 4.*

The Trade Union Act, 1871, s. 6, which declares that if any one of the purposes of a registered trade union is unlawful, the registration shall be void, and s. 13, which provides that the certificate of registration, unless withdrawn or cancelled, shall be conclusive evidence that the regulations of the Act have been complied with, must be read with the Trade Union Act, 1876, s. 8, which empowers the Registrar of Friendly Societies to withdraw or cancel the certificate of registration of a trade union on proof "that the registration of the trade union has become void under s. 6 of the Trade Union Act, 1871." Where, therefore, any of the purposes of a registered trade union are ultra vires, it can properly be sued in its registered name, until its certificate of registration has been withdrawn or cancelled by the registrar.

The committee of a trade union passed a resolution purporting to expel one of its members from the union. To an action by the member to restrain the union and its officers from wrongfully expelling him from the union the defendants pleaded that the action was not maintainable, because the expulsion was a tortious act done in furtherance of a trade dispute within s. 4 of the Trade Disputes Act, 1906:—

*Held*, that s. 4 of the Trade Disputes Act, 1906, did not apply to the case of a plaintiff suing in respect of a breach of his contractual rights under the rules of the union.

An unregistered association consisted of numerous trade unions and their members. One of its objects, as defined by its rules, was illegal. Under its rules it had a president, vice-president, treasurer and secretary, and its affairs were managed by an executive committee and its funds were vested in trustees. In an action by a member to restrain the application of the funds of the association to illegal purposes the president, vice-president, treasurer, and secretary were made defendants, and objected that they did not represent the association, and that the plaintiff should have sued the executive committee and the trustees:—

*Held*, that the defendant officials sufficiently represented the association for the purposes of the action. **PARR v. LANCASHIRE AND CHESHIRE MINERS' FEDERATION** - - - **Neville J. [1913]**

**1 Ch. 366; 82 L. J. (Ch.) 193; 108 L. T. 446;**

**[1913] W. N. 57; 29 T. L. R. 235**

**TRADE UNION—continued.****Threat.**

*Trade union—Threat or warning to employer not to employ plaintiff.*

The plaintiff, a cigar maker in the employment of a company, sued the defendants, who were in the same employment, for damages and an injunction to restrain them from inducing her employers to cease to employ her. The plaintiff was a member of the Independent Cigar Makers' Union. The defendant B. and the other employees were members of the Cigar Makers' Mutual Association. When the plaintiff entered into the employment, B. asked her if she belonged to the association. She replied that she did not. B. said, "You'll have to join next week or we won't work with you." A week later the plaintiff was asked if she had joined, and on her answering in the negative B. said, "You can't work here." The plaintiff replied, "You can't sack me. Mr. Phineas Phillips took me on; he alone can sack me." B. thereupon said, "Then we'll strike." The defendant then went to Mr. Phineas Phillips, who thereafter said to the plaintiff, "My workpeople refuse to work with you, and will go on strike if you don't join; you'll have to go." Mr. Phineas Phillips at the trial stated that B. said that the plaintiff had refused to join their union and that their union instructed them that if she stayed, they would not stay there. He said that he felt compelled to discharge her, as he did not care to see his employees go out. The county court judge held that there was no evidence of a threat to go to the jury and nonsuited the plaintiff:—

*Held*, that the county court judge was right in so holding.

Decision of the Div. Ct., 28 T. L. R. 515, reversed. **SANTEN v. BUSNACH AND ANOTHER**  
**C. A. 29 T. L. R. 214; 57 S. J. 226**

**Tort, Action of.**

*Competency—Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 4, sub-s. 1.*

Section 4, sub-s. 1, of the Trade Disputes Act, 1906, which provides that "an action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any Court," is general in its application and is not limited to tortious acts committed in contemplation or furtherance of a trade dispute; and any such action will be summarily dismissed upon an application under Order XXV., r. 4.

Decision of the C. A. [1912] 3 K. B. 547, affirmed. **VACHER & SONS, LD. v. LONDON SOCIETY OF COMPOSITORS** - **H. L. (E.) [1912]**  
**A. C. 107; 82 L. J. (K. B.) 232; 107 L. T. 722;**  
**[1912] W. N. 268; 29 T. L. R. 73; 57 S. J. 75**

**TRAMWAY—Abandonment—Deposit—Landowner—Compensation—Statutory obligation—Obligation to construct works "unless otherwise agreed"—"To the reasonable satisfaction of" another—Construction.**

A private Act of Parliament authorized a company to construct a tramway and other works. It provided (inter alia) that, "unless otherwise agreed in writing between" the district council and the company, the company should commence and complete the tramway within two years, and "carry

**TRAMWAY—continued.**

out to the reasonable satisfaction of the council the widenings" authorized by the Act. No such agreement in writing was entered into:—

*Held*, reversing the decision of Warrington J., that until an agreement altering the scheme of works was made, there was an absolute statutory obligation on the co. to do the works, and that a landowner whose property had been rendered less valuable by the abandonment of the undertaking was entitled to compensation out of the parliamentary deposit.

*In re Ruthin and Cerrig-y-Druidion Railway Act* (1886) 32 Ch. D. 438, followed. *In re WEST YORKSHIRE TRAMWAYS ACT*, 1906 - C. A. [1913]

1 Ch. 170; 11 L. G. R. 48; 108 L. T. 18; 82 L. J. (Ch.) 98; [1912] W. N. 289; 29 T. L. R. 115; 57 S. J. 111

— Rates—Assessment—“Land used only as a railway.”

*See RATES.*

*Tramcar—By-law requiring passengers to leave by hindermost end—Car standing stationary at terminus.*

A by-law of a corporation provided that passengers on their tramcars should “depart from or get off a car by the hindermost or conductor’s platform and not otherwise.” The two ends of the car were identical in construction and form. A passenger on one of the cars on arrival at the terminus of the tramway and while the car was stationary alighted from the end which, while the car was in motion, had been the driver’s end. He was summoned for a breach of the by-law:—

*Held*, that the expression “hindermost or conductor’s platform” must in each case be construed in relation to the particular passenger and the journey on which he was engaged, and meant the platform which was or would be the hindermost during the journey which the passenger in question had taken or was about to take; and that an offence had consequently been committed. *MONKMAN v. STICKNEY* - Div. Ct. [1913] 2 K. B. 377;

82 L. J. (K. B.) 992; 11 L. G. R. 612; 23 Cox, C. C. 474; 109 L. T. 142; [1913] W. N. 118; 77 J. P. 368

**TRANSFER—Company—Winding-up—Pending action in King’s Bench Division—Transfer to winding-up Court—Practice.**

*See COMPANY—WINDING-UP.*

—Land transfer.

*See LAND TRANSFER.*

**TREES—Cutting down—Injunction—Damages—Rights of common—Turbary—Estovers—Nuisance—Abatement—Excessive trespass.**

*See COMMON.*

**TRESPASS—Adjoining premises—Excavations—Damage to plaintiff’s wall—Underpinning by defendants—Claim for indemnity.**

The plt. was the landlord of certain premises and the defts. entered into a contract with the Commrs. of Works for the extension of adjoining premises. A clause in the contract provided

**TRESPASS—continued.**

that the defts. should indemnify the Commrs. against claims for damage, this clause not being limited to damage caused during the progress of the work. During the excavations there was danger of one of the plt.’s walls collapsing, and the architect representing the Commrs. ordered the defts., subject to the plt.’s consent, to underpin the wall. The defts. underpinned the wall without the plt.’s consent, although the danger was not so imminent as to make it reasonably necessary to do the work without it. The plt. brought an action of trespass against the defts., and the latter claimed an indemnity from the Commrs. as third parties:—

*Held*, that the defts. had not justified the trespass and that they were not entitled to an indemnity from the Commrs. *KIRBY v. CHESSUM* - Avory J. 30 T. L. R. 15

— Common.

*See COMMON.*

— Turbary rights.

*See COMMON and TURBARY RIGHTS.*

— Way, Right of.

*See LOCAL GOVERNMENT and WAY, RIGHT OF.*

**TRUST.**

*See SETTLEMENT and TRUSTEE.*

**TRUST DEED—Company.**

*See COMPANY.*

**TRUSTEE—Bankruptcy.**

*See BANKRUPTCY.*

*Breach of trust—Appropriation of security by defaulting trustee to meet breach of trust—Declaration of trust—Trustee and cestui que trust—Equitable mortgage—Irrevocable declaration—Statute of Frauds* (29 Car. 2, c. 3), s. 7.

In all cases where it is alleged that a defaulting trustee has appropriated securities to make good his breaches of trust, and a declaration of trust is relied on, the Court must be satisfied that a present irrevocable declaration has been made.

The Court refused to accept as evidence of such a declaration of trust pencil entries in private accounts kept by the defaulting trustee never communicated to any one, and which in some cases appeared to have been altered.

*Semble*, the absence of communication in itself raises a strong inference against an intention to make the appropriation irrevocable.

*Middleton v. Pollock* (1876) 2 Ch. D. 104, explained. *In re COZENS. GREEN v. BRISLEY. Neville J.* [1913] 2 Ch. 478; 109 L. T. 306; [1913] W. N. 199; 57 S. J. 687

— Breach of trust—Liability of trustees—Mora—Contributory negligence.

*See SCOTTISH LAW.*

*Breach of trust—Interest—Mortgage—Insufficient security—Property let on weekly tenancies—Duty of trustees to inquire as to nature of property and financial position of mortgagor—Valuer, Employment of—Duty of trustees to inquire as to previous dealings with mortgagor—Duties of valuer—Remuneration—“Two-thirds.”*

**TRUSTEE—continued.**

*limit—Form of report—Trustee Act, 1893* (53 & 57 Vict. c. 53), s. 8, sub-s. 1.

Order made by consent discharging the order of Warrington J. [1912] 1 Ch. 261, and substituting certain terms had been agreed upon by the parties. *In re SOLOMON. NORE v. MEYER* - C. A. [1913] 1 Ch. 200; 82 L. J. (Ch.) 160; 108 L. T. 87

*Breach of trust—Relief from liability—Statute of Limitations—Trustee Act, 1888* (51 & 52 Vict. c. 59), s. 8—*Judicial Trustees Act, 1896* (59 & 60 Vict. c. 35).

Appeal from a decision of Warrington J.

The testatrix by her will dated in 1887 appointed T. O. Farmer and two other persons executors and trustees, and bequeathed all the residue of her personal estate to trustees, and directed them to pay the income thereof in equal third parts to her nephews, R. W. and W. W., and her niece, E. A. W., during their respective lives, and subject thereto she declared that her trustees should stand possessed of the capital and income of the trust moneys in trust for all or any of the children or child of her said nephews or niece who might be living at the time of the failure of the trust thereinbefore contained, such children, if more than one, to take per capita in equal shares.

The testatrix died on July 8, 1887.

The trustees other than T. O. Farmer died in 1890 and 1894 respectively.

W. W. died on Dec. 19, 1896, leaving a widow and five children, some of whom were infants.

As from the death of W. W., the sole trustee, Farmer, acting under the advice of his solicitor, paid the income of W. W.'s share to his widow for the maintenance and support of the children.

Farmer died in 1904, and after his death the defts., his executrices, continued the payments of income down to 1906, when they were discontinued.

On May 26, 1910, an order was made by Parker J. declaring that the only period for the distribution of the testatrix's residuary trust moneys was at the death of the survivor of her two nephews and her niece; that there was an implied direction for accumulation of the income of W. W.'s share until the period of distribution; and that this direction was avoided by the Thellusson Act at the expiration of twenty-one years from the death of the testatrix, so that the accumulations would cease in 1908.

The plt. claimed as legal personal representative of the sole next of kin to be entitled to the income of W. W.'s share as from 1908, and to the interest arising from the accumulations of the income which ought to have been made between 1896 and 1908. The defts. relied on s. 8 of the Trustee Act, 1888; and alternatively claimed relief under the Judicial Trustees Act, 1896.

Warrington J. decided in favour of the plt.

The defts. appealed:—

*Held* (affirming Warrington J. on this point), that sub-s. 2 of s. 8 of the Trustee Act, 1888, dealt with two cases—(a) where an existing statute would be available but for the fact of the fiduciary relation; and (b) where no existing statute of limitations applied. The present case

**TRUSTEE—continued.**

fell within (b), but the defence of the statute would not avail because of the proviso at the end of clause (b) that the statute should not begin to run against any beneficiary, unless and until the interest of such beneficiary was an interest in possession. Here the plt.'s interest was not in possession until 1908, so the statute was no bar.

But *held* (reversing Warrington J. on this point), that the Judicial Trustees Act, 1896, applied where a trustee had misconceived his duty and paid money to a person not entitled. Having regard to the circumstances of this case and to the perfect honesty of the transaction, the Court ought to relieve the defts. from the breach of trust.

Statement of Parker J. in *In re Mackay, Grienemann v. Carr* [1911] 1 Ch. 300, at p. 307, adopted. Appeal allowed. *IN RE ALLSON—WHITTAKER v. BAMFORD* - C. A. [1913] W. N. 283; [1914] 1 Ch. 1; 30 T. L. R. 18; 58 S. J. 9

*Charity—Trust—Custodian trustee—Public Trustee Act, 1906* (6 Edw. 7, c. 55), ss. 2 (5), 4 (1), (3).

*In re CHERRY. ROBINSON v. TRUSTEES FOR WESLEYAN METHODIST CHAPEL PURPOSES* (REGISTERED) AND THE ATT.-GEN. [1914] 1 Ch. 83; 30 T. L. R. 30

See CHARITY—Trustee.

—Corporation—"Permanent trusts"—Liability of income of fund to duty.

See REVENUE.

—Income tax—Foreign possessions—Property settled on infants—Maintenance and education—"Uncontrolled discretion" of trustees.

See REVENUE.

—Limitations, Statutes of.

See LIMITATIONS, STATUTES OF.

*New trustee of will—Appointment of husband of tenant for life restrained from anticipation—Validity.*

The donee of the power of appointing new trustees of a will appointed the husband of a tenant for life entitled for her separate use without power of anticipation to be a trustee of the will together with a continuing trustee:—

*Held*, the appointment, if undesirable, was not invalid. *In re COODE. COODE v. FOSTER*

Neville J. 108 L. T. 94

—Pledge by one of two executors and trustees—Validity.

See EXECUTOR.

*Public Trustee—Consent—Acceptance in writing under his hand and official seal—Condition precedent—Execution of deed—Completion of appointment—Validity—Public Trustee Act, 1906* (6 Edw. 7, c. 55), ss. 2 (1) (c), 5 (4), 14 (1)—*Public Trustee Rules, 1912*, rr. 6 (a), 8 (2), 10 (g).

By her will Jane Shaw, who died in 1911, appointed three ladies her executrices and trustees, to whom she gave her estate on trust for sale.

In July, 1912, the three ladies were desirous of retiring from the trust and appointing the

**TRUSTEE—continued.**

Public Trustee to be sole trustee in their place. The death duties had not then been fully paid and the residuary account had not been passed, and the Public Trustee was not prepared to accept the trust, till all the administrative duties of the executors had been completed. The three ladies attended by appointment at the office of the Public Trustee on Nov. 29, 1912, where matters relating to the trust were discussed, and the three ladies executed the deed of appointment now in question, and delivered it to the Public Trustee for completion by him. The deed was then undated and unexecuted by the Public Trustee, who was a party thereto. The Public Trustee had not then consented to act in the trust by writing under his hand and official seal.

On Feb. 28, 1913, the Public Trustee, having then ascertained that the death duties had been paid and the residuary account passed, accepted the trust by writing under his hand and official seal, and filled in Feb. 28, 1913, as the date of the deed of appointment which he also executed on Mar. 3.

One of the three ladies having changed her mind wished to continue a trustee of the will, and now disputed the validity of the appointment on the ground that the appointment was made before the Public Trustee had given his consent in writing under his official seal.

Warrington J. said that in his opinion there was nothing ultra vires of the Public Trustee Act, 1906, *in re* 8 (2.) of the Public Trustee Rules, 1912, and that a consent by the Public Trustee in writing under his official seal was a condition precedent to a valid appointment otherwise than by will. The question therefore in the present case was whether the appointment in question was in fact made before the consent of the Public Trustee was duly obtained. The true inference to be drawn from the facts was that the appointment was not made on Nov. 29, 1912. The document to which on that day the signatures and seals of the three ladies were appended was only intended to operate as an appointment, when certain facts had happened and when certain things had been done. It was not the intention of any of the parties that a complete appointment should be made until those facts had happened and those things had been done. That being so, the administration having been completed, the Public Trustee did what all parties intended him to do; he completed the deed after executing a formal consent to act; and the deed became operative on the day on which the Public Trustee completed it and not before. The appointment therefore was in accordance with the Rules and was a valid appointment. *In re* SHAW. **THE PUBLIC TRUSTEE v. LITTLE**

Warrington J. [1913] W. N. 349;  
30 T. L. R. 133; 58 S. J. 154

— Reference, Trusts by—Settlement—Hotchpot clause—Several settled funds.  
*See* WILL.

— Settlement—Trust for sale—Difficulty of realization—Proposed appropriation in specie—Unauthorized investments.  
*See* SETTLED LAND.

**TRUSTEE—continued.**

*Writ of assistance—Receiver—Sole trustee—Solicitor—Securities in his hands—R. S. C., Orders XLVII., XLVIII.*

This was an *ex parte* motion by the plts., being beneficiaries under the will of the testator, asking for a writ of assistance to be issued against the deft., who was the surviving trustee of the will. On June 9, 1913, an action was commenced by the beneficiaries against the deft. for his removal from the office of trustee, and for administration, and a receiver. On June 13, 1913, upon motion on behalf of the plts. a receiver was appointed to receive and get in the outstanding personal estate of the testator, and the deft. was ordered to deliver over to the receiver all securities in his hands for such outstanding personal estate, together with all books and papers relating thereto. At this time the deft. was in Brixton prison, to which he was committed in April, 1913, for non-compliance with an order directing him to pay to certain trustees money received by him as their solicitor. On service upon him of the order of June 13, 1913, he refused or omitted to deliver up certain documents, which included a mortgage to secure 2275*l.* The object of the present motion was to enable the receiver to obtain possession of this mortgage security which counsel for the motion believed to be either in a safe at the deft.'s office, or in a box which the deft. had with him in prison.

Eve J. made the order accordingly for the issue of the writ. *In re* TAYLOR. **TAYLOR v. RAWSON** Eve J. [1913] W. N. 212

**TURBARY RIGHTS—Free turbary—Right to enter on land and cut and carry away turf—Profit à prendre—Purchase agreement—Tenant purchaser—Land Purchase Acts—Free turbary on specified bog—Right of allotment by owner of bog—Convenience—Management of bog.**

The plts. were seven tenants, on the estate of Lord S., who purchased their holdings under the Land Purchase Acts by agreements, which were all executed upon the same day, and contained the following provision:—"The tenant is to have the right of turbary for his own use on the bog in the vendor's possession, marked No. 1 on the map." Lord S., after retaining the bog in his own possession for several years, conveyed it to the deft. in fee-simple, for valuable consideration, subject to the rights of the plts. The plts. had no fixed turf-banks which they could claim as their own. It was proved that irregular and indiscriminate cutting had caused, and was calculated to cause, waste and bogslides, and thereby to injure and ultimately destroy the bog. Disputes arose between the plts. and deft. as to the nature and extent of their respective rights, and as to the manner in which, and person by whom, the turf-banks should be allotted. These questions were raised by claim and counter-claim in the action:—

*Held*, (1.) That the plts. were entitled to enter upon the bog, and to cut and carry away free turf for the use of their holdings, and for that purpose to have annually allotted to them, at a reasonable time of the year, turf-banks in

**TURBARY RIGHTS**—*continued.*

such parts of the bog reasonably convenient to them, as should not be prejudicial to the due preservation of the bog, or be likely to cause waste or bogslides therein, and to reasonable notice of such allotment. (2.) That the deft. was entitled annually to allot, at reasonable times of the year, and, after reasonable notice to plts., turf-banks at such places in the bog, reasonably convenient to them, as should not be prejudicial to the preservation of the bog, or be likely to cause waste or bogslides therein. (3.) That in allotting turf-banks the primary consideration should be the due preservation of the bog, and that the deft.'s right of working the remainder of the bog, for his own profit, was subject to, and should be subordinated to, the plts.' prior right of turbary. **FITZPATRICK v. VERSCHOYLE**

**Barton J. [1913] 1 I. R. 8**

*Trespass—Damage by cattle of owner of the soil to turf of owner of turbary rights—Dominant and servient tenement—Unreasonable user of natural rights by owner of servient tenement.*

An action for trespass will lie for damage, caused by the cattle of the owner of the soil and freehold of a bog, to turf cut and spread on a plot of such bog (not fenced or divided from the residue), by the owner of other lands who enjoys the right to cut and save turf on such plot, where such cattle are depastured by the owner of the soil upon the bog without provision by him for the prevention of such injury by his cattle to the turf.

The depasturage of cattle by the owner of the soil of the servient tenement, without such provision against injury to the turf of the dominant tenant so situated, is, under such circumstances, a user by such owner of the soil of his natural rights which is unreasonable in relation to the dominant tenant as prejudicing the value of the incorporeal hereditament in the nature of a profit à prendre enjoyed by the dominant tenant, by endangering the saving of the turf. **CRONIN v. CONNOR** Div. Ct. (Ir.) [1913] 2 I. R. 119

— Rights of common — Estovers — Nuisance — Abatement — Excessive trespass — Cutting down trees — Injunction — Damages.  
*See COMMON.*

**ULTRA VIRES**—Building society—Winding-up—Pensions—Proofs—Voluntary allowance.

*See BUILDING SOCIETY.*

— India, Burma Act IV. of 1898.  
*See INDIA.*

— National Insurance Act, 1911, ss. 14, 67—Dispute between member of approved society and society.  
*See INSURANCE (NATIONAL).*

— Powers of provincial Legislature—Alberta Act J Geo. 5, c. 9, held ultra vires.  
*See CANADA—Alberta.*

— Trade union—Rules—Parliamentary levies—Expulsion of member—Injunction—Unregistered association—Parties.  
*See TRADE UNION.*

**ULTRA VIRES**—*continued.*

— Trade union — Slander on officer as such — Action by officer — Indemnify by union against costs.  
*See MAINTENANCE.*

**UNION**—Trade union.  
*See TRADE UNION.*

**UNIVERSITY**—Irish University Act, 1908—Charity—Will—Construction—Legatee whether sufficiently described.  
*See WILL—Legacy—Misdescription.*

**UNSEAWORTHINESS**—Ship—Fire—Damage to cargo—Bill of lading—Exceptions.  
*See SHIPPING—Fire.*

**USER**—Easement—Presumption from user—Water—Artificial watercourse—Millstream—Riparian proprietors—Common owner—General words.  
*See WATER.*

— Trade mark—Registration—Surname.  
*See TRADE MARK.*

— Way, Right of — Change of condition — Alteration of user—Increase of burden.  
*See WAY, RIGHT OF.*

**VAGRANCY ACT, 1898.**

*See CRIMINAL LAW—Vagrancy.*

**VAGUENESS**—Restraint of trade—Reasonableness of restriction—Injunction.  
*See RESTRAINT OF TRADE.*

**VALUATION (METROPOLIS) ACT, 1869.**

*See WATER—Rate.*

**VALUER**—Trustee—Investment—Mortgage—Duties of valuer — Remuneration — “Two-thirds” limit—Form of report.  
*See TRUSTEE.*

**VARIATION**—Divorce—Variation of settlement.  
*See DIVORCE.*

**VENDOR AND PURCHASER**—Agreement to give an option to purchase and also a commission on sale—Construction—Appeal from Manitoba.

On Mar. 11, 1913, the appellants agreed to give the respondents an option to purchase on specified terms the properties in suit, and also agreed to pay them a commission on sale and to close the sale by deed and mortgage. The respondents duly exercised this option in favour of S., to whom the deed and mortgage were executed.

In a suit by the appellants to set aside the transaction and recover the property sold on the ground that they had subsequently discovered that S. was a clerk in the office of the respondents, the latter being the real purchasers, but disqualified as being agents for sale:—

*Held*, that the respondents were not merely agents to sell. An option to purchase was given to them in plain and unequivocal terms, and the subsequent clause as to a commission was not inconsistent therewith.

**VENDOR AND PURCHASER—continued.**

*Livingstone v. Ross* [1901] A. C. 327, distinguished. *Kelly v. Enderton* P. C. [1912] A. C. 191; 82 I. L. J. (P. C.) 57; 107 L. T. 781

*Conditions of sale—Rent-charge—Title—Lands subject to rent-charges—Sale by tenant for life—Sale in lots—Power to charge moneys paid on foot of apportioned part of rent-charge on unsold lot—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 4, sub-s. 3; ss. 5, 20, sub-ss. 1, 2; s. 55, sub-s. 2.*

A tenant for life put up for sale by private treaty lands subject to a rent-charge, in six separate lots, subject to a condition that each lot would be sold subject to the entire rent-charge, but primarily liable for an apportioned part thereof, and that the purchaser of each lot should covenant for the payment of such apportioned part, and for the indemnity of the other lots as regards such apportioned part only, and should charge all moneys payable on foot of such covenant on such lot, and that the vendor for the purpose of such condition should stand in the place of, and be deemed to be, the purchaser of any unsold lot or lots:—

*Held*, that this was a valid condition on such a sale. *In re Biggs-Atkinson and Ryan's Contract* - Barton J. (Ir.) [1913] 1 I. R. 125

*Contract for sale of land—Restrictive covenant—Restriction as to user for benefit of vendor's adjoining lands—Adjoining lands sold before completion of contract—Whether restriction enforceable.*

In Dec., 1911, the plts. agreed to sell to the deft. the Crystal Palace Hotel, and the agreement contained the clause: "It is understood that there are no restrictions attaching to the property which will prevent Mr. Lyons from building on the hotel garden a building suitable for a music-hall."

It appeared from the abstract of title that in Dec., 1898 J. V., the then owner of the hotel, agreed to sell it to the predecessors in title of the plt., subject to the stipulation that the conveyance should contain a covenant by the purchaser that neither the property nor any part thereof should at any time be used for any offensive or noisome trade or business, nor any purpose which might grow to be in any way a nuisance to "J. V. his heirs or assigns, owners and occupiers of the buildings and property adjoining to or in the neighbourhood of" the hotel; that J. V. died in April, 1899; and that the trustees of his will completed his sale to H. on Dec. 29, 1899, and that the conveyance contained a covenant by H. in the terms of the restrictive stipulation.

The deft. objected to the title on the ground that the hotel in the hands of the plts. was bound by the restrictive stipulation, and that the erection of a music-hall might be a breach of the covenant. The deft. refused to complete, and the plts. brought their action for specific performance.

*Neville J. held* that the material date was Dec. 29, 1899, the date of the conveyance to H.; at that date all the property of J. V. adjoining or near to the hotel had been sold, so

**VENDOR AND PURCHASER—continued.**

that there was then no property to which the benefit of the restrictive covenant could attach. The hotel therefore was not subject to any restrictive stipulations, and the plts. were entitled to judgment for specific performance and the usual inquiry as to title. *MILLBOURN v. LYONS* - *Neville J.* [1913] W. N. 319; [1914] 1 Ch. 34; 58 S. J. 154

*Conveyance—Parcels—Condition negating compensation—Plan—Falsa demonstratio—Implied covenants for title—Omission to prevent acquisition of title under Statute of Limitations—Liability of vendor—Measure of damages—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 7, sub-s. 1 (A).*

Appeal from a decision of Sargant J. [1913] 2 Ch. 39; [1913] W. N. 129.

In 1911 the vendor as beneficial owner conveyed to the purchaser a farm with the messuage, closes, or parcels of land belonging thereto, called Bank Hey Farm, containing 84a. 3r. 4p., or thereabouts, and in the occupation as to part thereof of T. H., and as to the remainder thereof of C. W. C., all which said premises were more particularly described in the plan indorsed thereon and coloured red. The plan included a small strip of land some 100 ft. long by 36 ft. wide which had formerly formed part of Bank Hey Farm, but as to which it was admitted for the purposes of this action that at the date of the conveyance an adverse title under the Statute of Limitations had been acquired by adjoining owners. In an action by the purchaser to recover damages from the vendor under the covenants for title implied by the vendor conveying this strip of land as beneficial owner, Sargant J. held that the strip of land was included in the parcels conveyed and that the plt. was entitled to damages.

The vendor appealed.

The C. A. *held* that on the true construction of the conveyance the strip of land was not included in the parcels. The land conveyed was accurately and completely described as being in the occupation of two tenants, and the reference to the plan was merely a falsa demonstratio which did not vitiate the description. Appeal allowed. *EASTWOOD v. ASHTON - C. A.* [1913] W. N. 325; [1914] 1 Ch. 68; 58 S. J. 152

— *Forfeiture, Relief against—Default in payment of an instalment of purchase-money—Time of the essence of the contract—Specific performance decreed. See FORFEITURE.*

*Improvement charge—By whom to be borne—London County Council (Improvements) Act, 1899 (62 & 63 Vict. c. cclxvi.), s. 61.*

Adjourned summons taken out by the purchaser under the Vendor and Purchaser Act, 1874, for a declaration that the purchaser was entitled to a conveyance of the land comprised in the contract free from an annual improvement charge of 30% placed thereon under the London County Council (Improvements) Act, 1899.

The contract, dated Sept. 27, 1912, was for the sale of land in the county of London, free from incumbrances, the purchase to be completed on Sept. 27, 1915.

**VENDOR AND PURCHASER—continued.**

The question was whether an improvement charge under the Act was created before or after the date of the contract.

The London County Council (Improvements) Act, 1899, s. 61, provided that all lands within the improvement area (which included the land in question) should "be liable to have" an improvement charge placed on them (sub-s. 2); that, two months before commencing the improvement, and as soon after the passing of the Act as they thought fit, the council should make a specification of all the lands within the improvement area on which they proposed to place a charge, and give notice by registered letter to the owner (sub-s. 3); that the council should, not sooner than twelve months nor later than three years after issuing their certificate of the completion of the improvement, make an assessment describing the lands which they "allege" ought to bear the improvement charge (sub-s. 4); that the assessment was to be approved by resolution of the council with or without modification or addition (sub-s. 5); sub-s. 6 provided for publication and service on the owners of the resolution. By sub-s. 8 the owner might, within three months, object to the assessment; and by sub-s. 10 the owner might set off a decrease in value (if any) of other land belonging to him within the improvement area. By sub-s. 11, in the absence of such objection or claim, the assessment became final; and by sub-s. 16 the amount defined by the assessment (or by the award, if any) as the charge "shall be a charge and incumbrance thereon, and the council shall cause the same to be registered as a land charge under the Land Charges Registration and Securities Act, 1888."

In the present case, on Feb. 20, 1900, a notice had been served by the council on the predecessor in title of the vendor, pursuant to sub-s. 3.

The certificate of the council of the completion of the improvement referred to in sub-s. 4 was issued on May 10, 1910.

The purchaser accepted the title on Jan. 21, 1913, and thereupon entered into possession under the terms of the contract as tenant at will to the vendor.

At a meeting of the council held on April 15, 1913, the council by resolution approved the assessment on the land comprised in the contract of an annual improvement rent-charge of 30/.. and on April 21 gave notice thereof to the vendor and purchaser. Prior to that date neither party had any knowledge that the land was or might become subject to any improvement charge.

Sargant J. held that there was nothing in the nature of a charge or incumbrance imposed on the land until the assessment was approved in April, 1913, which was long after the date of the contract. *Stock v. Meakin* [1900] 1 Ch. 683, was a decision on a different Act of Parliament, and was distinguishable. The purchaser was not entitled to a conveyance free from the improvement charge. *In re Farrer & Gilbert's Contract* - Sargant J. [1913] W. N. 298; 58 S. J. 98

*Note to complete after expiry of two previous notices—Vendor's delay—Rescission—Reasonable time for completion.*

A contract was entered into for the sale

**VENDOR AND PURCHASER—continued.**

of a large estate to the defts., and completion was fixed for Oct., 1911, six months ahead, the intention of the purchasers being to resell the property in lots in the meantime. In June the defts. contracted to sell two farms, part of the estate, to the plt., a farmer, who required them for occupation, and completion was fixed for the same date as their own contract. Part of the estate was subject to a mortgage, and it was arranged, to the knowledge of all parties, that such part should, as far as possible, be sold and the mortgage shifted to the property purchased by the plt. Delay having occurred in the completion of the original contract and the dealings with the mortgage, the plt. gave two successive notices requiring the defts. to complete his purchase, and finally, on Jan. 30, 1912, gave notice insisting on completion within a period of fourteen days, failing compliance with which he repudiated the contract and demanded a return of his deposit:—

*Held*, reversing Joyce J. (57 S. J. 212), that in the circumstances, assuming the plt. to be entitled to insist on a speedy completion, the notice actually given was unreasonable, and that the defts. were entitled to judgment. *STICKNEY v. KEEBLE* - C. A. 57 S. J. 389

— Probate—Revocation—Supposed intestacy—Grant of letters of administration—Sale of real estate by administratrix—Subsequent discovery of will appointing executors—Invalidity of purchaser's title.

*See PROBATE.*

— Sale of goods.

*See SALE OF GOODS.*

— Sale of shares—Warranty.

*See SALE.*

*Settled estates—Copyholds—Trustees selling under their power of sale—No admittance of trustees—Right of the lord of the manor to demand the admittance of the trustees—Right of trustees to have their nominee admitted.*

A testator by his will devised and appointed to his trustees his freeholds and copyholds for a period of a thousand years, and settled the whole of his property on ordinary legal uses. There was an overriding power of sale given by the will to the trustees. The will contained no express power to revoke uses. The testator died in 1883. The lord of the manor had not called upon the trustees for a tenant. The trustees were now selling under their power of sale, and proposed to nominate the purchaser of the copyholds to be admitted tenant on the rolls of the manor. The lord claimed the right to have the trustees admitted. The purchaser accordingly took objection to the title of the trustees to nominate him for admittance:—

*Held*, that the purchaser was lawfully put forward under the trusts of the will to be admitted tenant on the rolls of the manor, and the lord of the manor could not refuse to accept his nomination by the trustees, but must admit him upon the court rolls of the

**VENDOR AND PURCHASER**—*continued.*

manor upon payment of the usual fines on such admittance. *In re* HEATHCOTE AND RAWSON'S CONTRACTS, Farwell L.J., 108 L. T. 185; 57 S. J. 374

— Term left open to offer and acceptance—  
Term solely in vendor's favour—Waiver  
by vendor at the Bar.  
*See* FRAUDS, STATUTE OF.

**VESTING**—Portions—Younger children—  
"Eldest or only son"—Younger son  
becoming eldest after vesting of portion  
—Right to share in portions fund.  
*See* SETTLEMENT.

**VETERINARY SURGEON**—*Qualified person*—  
*Use of description by unqualified person stating  
specific qualification—Description of premises  
where business is carried on—"Canine surgery"*  
—*Veterinary Surgeons Act, 1881 (44 & 45 Vict.  
c. 62), s. 17, sub-s. 1.*

An information was laid against the respondent for that he did unlawfully use and take an additional description, to wit "Canine Surgery," thus stating that he was specially qualified to practise a branch of veterinary surgery contrary to s. 17 of the Act. The respondent carried on business on certain premises in the parish of Llandaff, in the county of Glamorgan, outside which he had a red lamp with the words "A. E. Kennard. Canine Surgery" on it, and a brass plate bearing the words "Canine Surgery. A. E. Kennard." The justices dismissed the information:—

*Held*, on appeal by way of case stated, that there was a distinction between the description of a place and of a person. The respondent had described the premises as a canine surgery, but had not described him self as a canine specialist, as in *Royal College of Veterinary Surgeons v. Collinson* [1908] 2 K. B. 248. The decision of the justices was right. Appeal dismissed.  
ROYAL COLLEGE OF VETERINARY SURGEONS v. KENNARD  
Div. Ct. [1913] W. N. 286;  
[1914] 1 K. B. 92; 30 T. L. R. 3

**VEXATIOUS ACTIONS**—*Order that no legal proceedings be instituted without leave of High Court—Criminal proceedings—Vexatious Actions Act, 1896 (59 & 60 Vict. c. 51), s. 1.*

On Dec. 17, 1910, a Div. Ct., upon the application of the Attorney-General, made the following order against the applicant Bernard Boaler under sect. 1 of the Vexatious Actions Act, 1896: "It is ordered that no legal proceedings shall be instituted by the said Bernard Boaler in the High Court or in any other Court, unless he obtains the leave of the High Court or some judge thereof and satisfies the Court or judge that such legal proceeding is not an abuse of the process of the Court and that there is a prima facie ground for such proceeding."

It appeared from an affidavit made by the applicant that on May 21, 1913, the applicant gave the clerk of the Central Criminal Court statutory notice in writing that he "purposed at the next ensuing sessions to be held on the 27th of May, 1913, to present a bill of indictment to the grand jury against John

**VEXATIOUS ACTIONS**—*continued.*

Esson & Son, Limited, in respect of certain misdemeanours committed within the jurisdiction of the Central Criminal Court over which the Courts of summary jurisdiction had no jurisdiction to hear and determine or to commit for trial."

On Wednesday, May 28, 1913, he was requested by an official in the Indictment Office of the Central Criminal Court to go to the Recorder, Sir Forrest Fulton, sitting in court. He went, and the Recorder referred to the Vexatious Actions Act, 1896, and expressed the opinion that the order prohibited the applicant from instituting any legal proceedings, unless he had obtained the leave of the High Court or some judge thereof to present the bill of indictment to the grand jury; that he could not give the applicant leave, because he was not a judge of the High Court, and finally said that the applicant could not institute criminal proceedings without the leave of the High Court or of some judge thereof.

The applicant having subsequently obtained leave of a Div. Ct. served notice of motion upon the Att.-Gen., John Esson & Son, Ltd., and certain other persons against whom he alleged the commission of certain criminal offences, for an order (inter alia) that the order restraining him from instituting legal proceedings, unless he complied with the conditions imposed by the order made under the Vexatious Actions Act, 1896, by a Div. Ct. on Dec. 17, 1910, might be limited to civil legal proceedings, or in the alternative for an order declaring that the power given to the High Court by the Vexatious Actions Act, 1896, to forbid the institution of legal proceedings without leave of the Court only applied to civil proceedings and that the Court had no power to abrogate the applicant's common law right as a citizen to prefer a bill of indictment to the grand jury of the Central Criminal Court for felony or misdemeanour.

The Div. Ct. held that the order of Dec. 17, 1910, must be limited so as to exclude criminal proceedings. *In re* VEXATIOUS ACTIONS ACT, 1896, AND *In re* BERNARD BOALER

Div. Ct. [1913] W. N. 274; [1914] 1 K. B. 122; 29 T. L. R. 767

**VOLUNTARY CONVEYANCE OF LANDS**—

*Onus of proof—Trusts for infants—Subsequent purchaser for value—Onus of proving voluntary conveyance made bona fide—Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), s. 2—Conveyance with intent to defraud creditors—Nature of fraud required to be proved—10 Ch. 1 (Ir.), Sess. 2, c. 3, ss. 1, 10.*

Where a voluntary conveyance of lands is impeached by a subsequent purchaser for value, the onus of proving that such conveyance was made bona fide and without fraudulent intent, so as to bring it within the protection of s. 2 of the Voluntary Conveyances Act, 1893, lies on the party seeking to uphold such voluntary conveyance.

Where infants were unable to prove affirmatively the bona fides of a voluntary convey-



**VOLUNTARY CONVEYANCE OF LANDS — continued.**

ance of lands executed in their favour by their father, the conveyance was held void as against a subsequent purchaser for value.

To bring a deed within s. 10 of 10 Ch. 1 (1r.), Sess. 2, c. 3, as being made with intent to defraud creditors, the deed must be fraudulent in its conception or execution. A subsequent fraudulent dealing with the property comprised in the deed cannot avoid it. The onus of proof is cast on the party impeaching the deed. *THE NATIONAL BANK, LD. v. BEHAN*

O'Connor, M.R. [1913] 1 R. 512

**VOLUNTARY GIFT—Deed of gift.**

See GIFT.

**VOLUNTARY WINDING-UP—Company.**

See COMPANY—WINDING-UP.

**VOTING**—Parish council—Chairman—Duration of office—New council—Annual meeting—Right of chairman to vote at election of his successor.

See LOCAL GOVERNMENT.

**WAGES—Coal mine.**

See MINE.

Seamen—"Wreck."

See SHIPPING.

**WAIVER**—Vendor and purchaser—Sale of land—Contract—Term left open to offer and acceptance—Term solely in vendor's favour—Waiver by vendor at the Bar.

See FRAUDS, STATUTE OF.

**WAREHOUSEMAN—Lien—General lien.**

See LIEN.

**WARRANTY**—Sale of goods—Breach of warranty—Loss of trade—Measure of damages.

See SALE OF GOODS.

—Sale of shares.

See SALE—Shares.

—Seaworthiness—Bill of lading—Exemptions from liability—Fire—Dangerous cargo.

See SHIPPING.

—Statutory.

See LANDLORD AND TENANT.

**WASTE**—Common, Rights of—Trespass by commoner—Serious injury to waste—Suit by fellow commoner—Injunction.

See COMMON.

—Lease—Covenant to repair—Unassignability of right to damages for waste.

See CHOSE IN ACTION.

—Settled estate—Will—Construction—Tenant in fee with executory gift over—Unenforceable for waste—Mining lease—Rents and royalties—"Contrary intention" expressed in settlement—Quality of estate.

See SETTLED LAND.

**WATER.**

*Artificial Watercourse*, col. 664.

*Poor Rates*. See RATE.

*Rate*, col. 664.

*Supply*, col. 665.

**Artificial Watercourse.**

*Mill stream—Riparian proprietors—Common owner—Easement—Presumption from user—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 6—General words.*

An artificial watercourse, constructed long before living memory, carried water from a weir in the river Arran at Dolgelly to a mill owned by the deft. lower down the river. The plt. owned land adjoining the watercourse between the intake and the mill. For more than 100 years prior to 1908 the lands of the plt. and deft. belonged to a common owner, but the tenants had always been different. In 1908 the plt.'s land and the mill were conveyed to the predecessors in title of the plt. and deft. respectively; the conveyance to the plt.'s predecessor was silent as to any water rights; the conveyance to the deft.'s predecessor contained a grant of the flow of water as used and enjoyed. There was evidence that the tenants of the plt. and his predecessors had always used the water from the watercourse for the purposes of their respective businesses of a fellmonger and a mason's yard, but the tenants of the mill had always kept it in repair, and stopped the water altogether when necessary for repairs, and to some extent controlled the flow of water. The deft. had taken up the troughs which formed the original watercourse and substituted iron pipes from which the plt.'s tenants could get no water. There was a dispute whether the plt.'s land included the site of the watercourse:—

*Held*, on the facts, that the land upon which the watercourse opposite the plt.'s land was constructed was comprised in the conveyance to the plt., and that the true inference from the user of water was that the watercourse was originally constructed for the common benefit of all the tenants, and that the quasi-easements enjoyed by the plt.'s tenants during the common ownership had passed to the plt. by virtue of the general words in s. 6 of the Conveyancing Act, 1881; and that therefore the deft.'s removal of the old troughs and substituting the iron pipes was a trespass, and an inquiry as to damages must be directed. *LEWIS v. MEREDITH*

*Neville J. [1913] 1 Ch. 571; 82 L. J. (Ch.) 255; 108 L. T. 549*

**Poor Rates.**

—Waterworks—Gathering ground.

See RATE.

**Rate.**

*Charges—Dwelling-house outside borough but within limits of special Act—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 1, 85, 53—Plymouth Corporation Water and Markets Act, 1861 (30 & 31 Vict. c. cxxviii.), ss. 14, 15, 22.*

*PITTS v. PLYMOUTH CORPORATION*

*Div. Ct. [1912] 1 K. B. 301; 10 L. G. R. 312; 81 L. J. (K. B.) 1240*

**WATER (Rate)—continued.**

*Rateable value—Quantum—Valuation list in force at commencement of quarter—Supplemental valuation list—Provisional valuation list—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 8, 13—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 43—47.*

The deft. was the occupier of licensed premises in the city of London, which were supplied with water by the plts. under the Metropolitan Water Board (Charges) Act, 1907. By s. 8 of that Act payment for water so supplied was to be at a rate per annum not exceeding 5 per cent. of the "rateable value" of the house in respect of which the supply was required, and by s. 13 the rateable value "for the purposes of this Act" was to be determined "by the valuation list in force at the commencement of the quarter" for which the water rate accrued. The water rate was payable in advance by four quarterly payments on April 1, July 1, Oct. 1, and Jan. 1 in each year.

In 1908 the quinquennial valuation list for the parish of the city of London was altered by the making of a supplemental valuation list which came into force on April 6, 1909. By this supplemental list the rateable value of these licensed premises was shewn at 400*l*.

On June 2, 1910, the overseers of the parish sent to the assessment committee pursuant to s. 47 of the Valuation (Metropolis) Act, 1869, a provisional list in which the licensed premises were included at the reduced rateable value of 399*l*., and on June 23, 1910, the clerk of the committee served on the deft. as occupier a copy of so much of the provisional list as related to these premises, with a notice specifying a day on or before which any objection to the list might be made. On Oct. 3, 1910, the committee considered the provisional list and reduced the rateable value of the premises to 234*l*. On Oct. 1, 1910, the water rate for the quarter commencing on that date became due from the deft. to the plts. The action was brought to determine the question whether for the purposes of this water rate the valuation list in force on Oct. 1, 1910, was the supplemental valuation list or whether, upon the construction of sub-ss. 3 and 8 of s. 47 of the Valuation (Metropolis) Act, 1869, the provisional list related back to June 23, 1910, and came into force as from that date:—

*Held*, that the valuation list in force on Oct. 1, 1910, was the supplemental list unaltered by the provisional list, and that the deft. was liable to pay the rate payable on that date on the rateable value of 400*l*.

Decision of the C. A. [1912] 2 Ch. 546, reversed, and decision of Parker J. [1912] 1 Ch. 296, restored. METROPOLITAN WATER BOARD v. PHILLIPS - - H. L. (E.) [1912] A. C. 86.

82 L. J. (Ch.) 89; 10 L. G. R. 983; 107 L. T. 659; 77 J. P. 73

—Recovery—Limitation of time.

See LIMITATIONS, STATUTES OF —  
Special Periods of Limitation.

**Supply.**

*London—Building operations—Supply by measure—"Builder who shall require a supply"—Builder taking water from building owner—*

**WATER (Supply)—continued.**

*Right of Water Board to charge—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), ss. 16, 17.*

By s. 16, sub-s. 1, of the Metropolitan Water Board (Charges) Act, 1907, dealing with "supply by measure," the Board shall at the request of any owner or occupier of premises who requires for use on such premises a supply of water by measure for purposes other than domestic afford a supply of water by means of a meter or other instrument or apparatus. By s. 17, "Any builder being about to erect any building or part of a building who shall require a supply of water for that purpose shall be deemed to be the occupier of premises within the meaning and for the purposes of the section of this Act relating to 'supply by measure'; Provided that, if the Board so determine, they may instead of affording the required supply by measure afford the same at a rate not exceeding seven shillings per hundred pounds of the probable total cost after making such allowance as the Board may think reasonable for decorative or iron or steel work not requiring the use of water."

The plts., the Metropolitan Water Board, agreed with the Secretary of State for War to supply water by measure at certain rates to Hounslow barracks for domestic and non-domestic purposes. During the currency of the agreement the defts., who were builders, under a contract with the Secretary of State for War erected an addition to the hospital quarters at the barracks, it being a term of the contract that water for the building operations might be obtained by the defts. free of charge from any available War Department source. The defts. took the necessary water from the supply at the barracks after it had passed through the meter and therefore after the Secretary of State for War had become liable to pay for it. The plts. claimed to recover from the defts., under s. 17 of the Metropolitan Water Board (Charges) Act, 1907, 1*4s.*, being 7*s.* per 100*l*. of the probable total cost of the building.

In Dec., 1907, the plts. had passed a general resolution that, instead of affording supplies for building purposes under s. 17 by measure, such supplies should be afforded at the rate of 7*s.* per 100*l*. of the probable total cost of the building after making such allowance as by their appeal and assessment committee they might think reasonable for decorative or iron or steel work not requiring the use of water. The plts. had not considered, in the case of the building erected by the defts., whether any allowance should be made:—

*Held*, that the word "require" in s. 17 meant "demand" and not merely "have need of"; that the defts. had not "required" from the plts. within the meaning of s. 17 a supply of water for building purposes; and that therefore the plts. were not entitled to recover the sum claimed.

*Held*, also, that, as the plts. had not considered in the particular case whether any allowance should be made in respect of the matters referred to in the proviso to s. 17, the general resolution was not a sufficient "determination" by the plts. so as to entitle them to charge the 7*s.* per

**WATER (Supply)—continued.**

100% of the probable total cost of the building. Judgment of Div. Ct., 11 L. G. R. 113, reversed.  
**METROPOLITAN WATER BOARD v. JOHNSON & Co.** C. A. [1913] 3 K. B. 900; 82 L. J. (K. B.) 1164; 11 L. G. R. 116; 109 L. T. 88; [1913] W. N. 196; 77 J. P. 384; 29 T. L. R. 603; 57 S. J. 625

*London—Domestic purposes—Trade purposes—Metropolitan Water Board (Charges) Act, 1907 (7 Edw. 7, c. clxxi.), s. 25.*

Appeal from a decision of the C. A. [1913] W. N. 260, affirming a decision of the Divisional Court [1913] 2 K. B. 257, which reversed a decision of the Westminster County Court judge. The question raised by the appeal was whether water supplied by the appellants to a public-house, where luncheons were provided, and used for cooking the food and washing up the plates and dishes, was used for domestic purposes or for the purposes of a trade, manufacture, or business within the meaning of s. 25 of the Metropolitan Water Board (Charges) Act, 1907.

The Div. Ct. and the C. A., reversing the decision of the county court judge, held that the supply was for domestic purposes.

The H. L. dismissed the appeal, being of opinion that the case was governed by the principle of *Colley's Patents, Ltd. v. Metropolitan Water Board* [1912] A. C. 24, and *Pidgeon v. Great Yarmouth Waterworks Co.* [1902] 1 K. B. 310, and agreeing with Buckley L.J. that the test was not whether the water was used in the course of the trade, but whether the use of the water was in its nature domestic. **METROPOLITAN WATER BOARD v. AVERY**

H. L. E. [1913] W. N. 370; 58 S. J. 171

*Several houses served by one pipe—Supply cut off by water company—Refusal to restore unless separate pipes be laid—Regulations as to preventing waste—Waterworks Clauses Act, 1847 (10 Vict. c. 17), ss. 43, 72, 74—Norwood (Middlesex) Water Order, 1878, ss. 19, 20—Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), ss. 4, 5.*

By s. 19 of the Norwood (Middlesex) Water Order, 1878, the undertakers may from time to time make and enforce reasonable regulations for preventing the waste or misuse of water, and prescribe pipes proper and suitable for the purposes of supply; and by s. 20, in the event of such regulations not being observed, may cut off the water supply. By s. 31 of the rules and regulations under the Order "No service pipe shall . . . be so arranged as to supply more than one house." By s. 4 of the Water Companies (Regulation of Powers) Act, 1877, water is not to be cut off, where the water rate is payable by the owner.

The respondent owned seven houses which by agreement the appellants had since 1895 supplied with water from their main by a single pipe, and the respondent paid the water rates. In 1911 he was in arrear in respect of the payment of water rates, and the appellants cut off his service pipe. On the respondent's subsequent payment of arrears and tender of a half-year's payment the appellants expressed their willingness to reconnect the supply as soon as he should have laid

**WATER (Supply)—continued.**

a separate service pipe to each of the seven houses. The respondent refused to do this and summoned the appellants for unlawfully refusing to furnish a supply of water:—

*Held*, that the appellants, having in the first instance contravened the Act of 1887 by wrongfully cutting off the water supply, had no right to require the respondent to comply with the condition as to laying separate pipes before restoring the water through the single pipe. They were bound to restore the status quo ante before they were entitled to exercise any of the rights they had under s. 20 of their Order of 1878 and the regulations under it. **SOUTH WESTERN SUBURBAN WATER CO. v. HARDY**

Div. Ct. 11 L. G. R. 1000; 109 L. T. 169; 77 J. P. 283

*Urban sanitary authority—Supply of water for domestic purposes—Post Office premises not on valuation list and not rated—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 44, 49, 50, 53.*

Sect. 53 of the Waterworks Clauses Act, 1847, provides as follows:—

"Every owner and occupier of any dwelling-house or part of a dwelling-house . . . shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water-rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes."

The plt., who was the occupier of premises used as a post office within the district supplied by the defts., which premises were not entered on the valuation list and were not rated, demanded a supply of water for domestic purposes, but did not strictly comply with all the regulations made by the defts., and was unable to agree with the defts. as to the proper amount to be paid by him for the water-supply:—

*Held*, that the premises not being rated, the defts. could not insist on prepayment of water-rate by the plt. as a condition precedent to their supplying the plt. with water, and that the plt. was entitled to a supply of water for domestic purposes as of right, subject to his complying with the requirements of the rules and regulations of the defts., and on payment of the value of the water supplied, which value should, if necessary, be ascertained in Chambers. **H.M.'s POSTMASTER-GENERAL v. NENAGH (J.D.C.)**

Ross J. (Ir.) [1913] 1 I. R. 238

*Workhouse—"Private dwelling-house"—Bristol Waterworks Act, 1862 (25 & 26 Vict. c. cxxx.), ss. 68, 73—Waterworks Clauses Act, 1847 (10 Vict. c. 17), ss. 48, 53.*

**BRISTOL GUARDIANS v. BRISTOL WATERWORKS** C. A. [1912] 1 Ch. 846; 81 L. J. (Ch.) 608; 11 L. G. R. 87; 106 L. T. 615; [1912] W. N. 114; 76 J. P. 273; 28 T. L. R. 349

**WATERCOURSE.**

See WATER.

**WATERWORKS.**

See WATER.

**WATERWORKS**—*continued.*

— Gathering ground.

*See* **RATES.****WAY**—Highway.*See* **HIGHWAY.****WAY, RIGHT OF**—Alleged right of way—Action by landowner for trespass—District council added as defendants—Pleadings.*See* **LOCAL GOVERNMENT.***Easement—Parol agreement—Implied terms.*

Appeal from a portion of an order of the C. A.

[1913] 1 Ch. 113.

The appeal was confined to questions of fact not dealt with in the report in the Court below.

The H. L. came substantially to the same conclusion as the C. A., and affirmed their decision subject to a variation. **GRAND HOTEL, EASTBOURNE, LD. v. WHITE AND ANOTHER****H. L. E. [1913] W. N. 306; 58 S. J. 117***Obstruction—Right of person obstructed to go on adjoining land.*

A level crossing over a ry. formed part of an old road which had been set out in an enclosure award as a private road for the use of persons who had land abutting on the road, and certain other persons, including the defts. By agreement with the plt.'s predecessor in title and the ry. co. this level crossing was closed by the ry. co. The defts., finding that this obstruction existed, went over land belonging to the plt., whereupon the plt. sued them for trespass:—

*Held*, that the action failed, inasmuch as the plt., being a party to the closing up of the right of way, could not complain of the defts. deviating on to his land in order to get past the obstruction. **STACEY v. SHERRIN AND ANOTHER****Div. Ct. 39 T. L. R. 555**

— Public right of way—Assertion of right by district council—Action by landowner for declaration and injunction—Reasonable cause of action.

*See* **LOCAL GOVERNMENT—Rural District Council.****WEIGHERS**—Workmen's compensation—Port and harbour authority—Licensed meters and weighers—Compulsory employment by shipowners.*See* **WORKMEN'S COMPENSATION.****WEIGHING**—Weighing goods in docks—Statutory right of undertakers—Exclusive right to weigh—Provision of weighing machines.*See* **DOCKS.****WEIGHTS AND MEASURES**—Coal—Sale and delivery—Statute containing temporary and permanent provisions—Subsequent Statute continuing whole Act for further term—Mistake—1 & 2 Will. 4, c. lxxvi., s. 52—1 & 2 Vict. c. cl., s. 1.*See* **COAL.**

— Sale of coal—By-law—Not carrying scales and weights—"Carrying coal for sale"—Coals for delivery.

*See* **COAL.****WHIPPING**—Prostitution, Living on—Punishment—Conviction as rogue and vagabond—Conviction on indictment.  
*See* **CRIMINAL LAW—Sentence.**— Prostitution, Procuring—Punishment—Proceedings pending.  
*See* **CRIMINAL LAW—Sentence.****WIFE**—Husband and.  
*See* **HUSBAND AND WIFE.****WILL.***Abatement. See below, Legacy.**Accumulate, Direction to, col. 671.**Administration. See ADMINISTRATION.**Ambiguity, col. 672.**Annuity, col. 674.**Appointment. See POWER OF APPOINTMENT.**Apportionment. See APPORTIONMENT.**Capital and Income, col. 674.**Charge, col. 676.**Charity, col. 677.**Class. See below, Legacy.**Codicil, col. 677.**Contingent Interest. See below, Legacy.**Conversion. See CONVERSION.**Debts, col. 678.**Devise, col. 678.**Disclaimer. See DISCLAIMER and below, Marshalling Assets.**Estate Duty. See REVENUE.**Estate Tail. See above, Devise.**Execution, col. 681.**Executor, col. 682.**Forfeiture, col. 682.**Gift Over, col. 683.**Hotchpot Clause, col. 684.**Interest. See below, Legacy.**Intestacy, col. 685.**Investment Clause, col. 685.**Legacy, col. 686.**Maintenance Clause, col. 689.**Marshalling Assets, col. 690.**Misdescription, col. 690.**Perpetuities. See above, Devise.**Power of Appointment. See POWER OF APPOINTMENT.**Probate. See PROBATE.**Revocation. See above, Legacy.**Settled Land. See SETTLED LAND.**Settlement. See SETTLEMENT.**Substitutional Gift, col. 691.**Trust, col. 693.**Vesting. See above, Devise.*

**WILL—continued.***Will speaking from Death, col. 696.**Words, col. 696.***Abatement***See below, Legacy.***Accumulate, Direction to.**

*Accumulation—“Minority of person who if of full age would be entitled to the rents and profits”—Person born after the testator's death—Accumulations Act, 1800 (Thellusson Act) (39 & 40 Geo. 3, c. 98), s. 1.*

*Appeals from decisions of Neville J. [1907] 1 Ch. 567, and Swinfen Eady J.*

Testator, who died in 1880, devised his real estate to trustees for a term of 1000 years and subject thereto devised his real estate to his grandchildren. The trusts of the term of 1000 years were to pay annuities to his wife and daughters and to raise certain capital sums, and subject thereto to pay or appropriate the ultimate surplus of the rents and profits to the children for the time being living of any son or deceased son of the testator, but so that the share appropriated to any minor child should, subject to certain provisions for maintenance, be accumulated during minority, the accumulations to fall into personal estate. The personal estate was directed to be held upon trusts corresponding as near as possible to the trusts of the real estate.

At his death in 1880 no grandchild of the testator was in existence, but in 1885 a daughter, Gladys, was born to his eldest son, and she attained twenty-one in 1906. During her infancy no other grandchild was born to any son of the testator, and the rents and profits were accumulated.

In 1906 an originating summons was taken out before Neville J. for the purpose of ascertaining whether the direction to accumulate was void on the ground that the fourth rule in the Thellusson Act did not authorize accumulations during the infancy of a person not in existence at the death of the testator. Neville J. held that the accumulations made during Gladys's minority were valid, but the order as passed and entered went further and declared that all directions for accumulations in the testator's will were valid.

In 1912 a second grandchild was born, being a son of the testator's youngest and only surviving son, and the question then arose whether the direction to accumulate his share for a second term of twenty-one years was valid. On the matter coming before Swinfen Eady J. on originating summons he held that, on the words of the order of Neville J., the question was *res judicata*. Subsequently one of the next of kin who was not a party to either summons obtained leave to appeal from both orders, upon condition of not disturbing the rights acquired by Gladys in the accumulations made during her minority.

The C. A. dismissed the appeals, holding that there was nothing in the Act to limit the fourth period in s. 1 of the Act to children living at the death of the testator. *In re CATTELL. CATTELL v. CATTELL. CATTELL v. DODD.*

C. A. [1913] W. N. 306; 58 S. J. 67

**WILL (Accumulate, Direction to)—continued.**

*Power to use accumulations in payment of mortgage debts—Validity of accumulation after twenty-one years—“Provision for payment of debts”—Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98), s. 2.*

By his will dated in 1867 a testator bequeathed his residuary personal estate and devised his real estate upon trust out of the rents and profits of the realty and the annual income of the residuary personally to pay certain annuities; and he directed that during the lives of the annuitants and the survivor the trustees should accumulate the residue of the rents and profits and annual income in the way of compound interest by investing the same and the resulting income, and declared that it should be lawful for the trustees in their absolute discretion to resort to and use all or any part of the accumulations in reduction or payment of the whole or any part or parts of the sum or sums of money which at the time of his decease might be owing by him and secured by mortgage of his real estate or any part thereof.

The testator died in 1868; the last of the mortgage debts subsisting at his death was paid in 1907, and in 1911 the survivor of the annuitants died.

There were no accumulations of surplus rents or income until 1898, i.e., thirty years after the testator's death, and no mortgage debts were paid out of the accumulations.

Eve J. said that those who asserted that accumulations could be rightly made after twenty-one years had expired in effect claimed to have the sum accumulated since 1898 applied in recouping capital, inviting the Court to treat the direction as to the application of accumulations in payment of debts as a provision for accumulating income to recoup capital applied in payment of debts. He could not so treat it; at most it was a power to apply accumulations in payment of debts, and was not, in his opinion, a “provision for payment of debts” within s. 2 at all. Nor would it be, even if it were in terms a direction to accumulate income to recoup capital. (*See Tewart v. Lawson* (1874) L. R. 18 Eq. 490; *In re Green; Baldock v. Green* (1888) 40 Ch. 1, 610; and *In re Heathcote; Heathcote v. Trench* [1904] 1 Ch. 826.) He held, therefore, that the direction to accumulate was inoperative after twenty-one years, and (on the construction of the will) that the accumulations made subsequently were undisposed of and so much as represented realty belonged to the heir and the balance to the next-of-kin. *In re CRESSWELL. LINEHAM v. CRESSWELL. Eve J. [1913]*

W. N. 177; 57 S. J. 578

**Administration.**

*See ADMINISTRATION.*

**Ambiguity.**

*Bequest to unmarried daughters of A. and B.—Bequest to B. or his daughters—Per capita or per stirpes—Construction.*

Harriet Harper, by her will dated Nov. 19, 1908, appointed executors and trustees, and after giving certain pecuniary legacies, including a legacy of 500*l.* to Dr. A. S. Grant, gave the

**WILL (Ambiguity)—continued.**

residue of her real and personal estate to her trustees upon trust for sale and conversion and to stand possessed of the trust premises upon trust to pay the income to her sister for her life, and after her death to pay and divide the same into equal moieties, "one moiety to be paid to my niece and the other moiety to be divided equally between the unmarried daughters of my brother-in-law, Dr. J. Harper, and Dr. A. S. Grant equally."

The testatrix died on Nov. 20, 1908. At the date of her death Dr. J. Harper had five daughters, of whom three were unmarried. Dr. A. S. Grant had one daughter only, Edith Mary, who was then an infant of four years of age. The sister of the testatrix died in 1913.

This was an originating summons taken out by the trustees for the determination of the questions (1.) whether the gift of the moiety was to Dr. A. S. Grant personally or to Edith Mary Grant as his unmarried daughter; and (2.) whether the moiety was divisible equally between the unmarried daughters of Dr. J. Harper and Dr. A. S. Grant or Edith Mary Grant (as the case might be), or whether the unmarried daughters of Dr. J. Harper took one half-share of the moiety and Dr. A. S. Grant or Edith Mary Grant (as the case might be) the other half-share thereof.

Sargant J. held, (1.) that the gift of the moiety was a gift to Dr. A. S. Grant personally and not to his unmarried daughters; (2.) that the moiety was divisible in equal fourth shares between the three unmarried daughters of Dr. J. Harper and Dr. A. S. Grant.

*In re Walbran, Milner v. Walbran* [1906] 1 Ch. 64, distinguished. *In re HARPER. PLOWMAN v. HARPER - Sargant J. [1913] W. N. 297; [1914] 1 Ch. 70; 58 S. J. 120*

*Gift to husband and wife and "their daughter"—Five daughters—Extrinsic evidence as to which daughter was meant—Division into three shares.*

Testatrix, who died in 1913, by her will made in Aug., 1912, gave her residuary personal estate "between my brother, Walter Jeffery, his wife and their daughter."

It appeared that there were five daughters of Walter Jeffery and his wife, of whom Phoebe Winifred was one, and this was an originating summons taken out by the executor for the determination (inter alia) of the question who were entitled under the residuary bequest and in what shares and proportions.

Evidence was adduced to the effect that the testatrix was on extremely intimate terms with Phoebe Winifred, but not with the other four daughters; also that by a former revoked will made in 1909 the testatrix gave her residue to be equally divided between her brother, Walter Jeffery, and "his daughter Phoebe Winifred."

Warrington J. said that the case was one in which extrinsic evidence of intention as well as of the surrounding circumstances was plainly admissible for the purpose of showing which of the five daughters of Walter Jeffery and his wife was intended to take; and that on the evidence before him, even treating it as evidence of surrounding circumstances alone, he had no

**WILL (Ambiguity)—continued.**

difficulty in concluding that Phoebe Winifred was the daughter intended to take. On the true construction of the will the residue was to be divided in equal third shares between Walter Jeffery, his wife, and their daughter Phoebe Winifred, and not in moieties between Walter Jeffery and his wife taking as one person by entireties and Phoebe Winifred.

*In re Dixon, Byram v. Tuck* (1889) 42 Ch. D. 306, followed; *In re Jupp, Jupp v. Buckwell* (1888) 39 Ch. D. 148, distinguished. *In re JEFFERY. NUSSEY v. JEFFERY*

**Warrington J. [1913] W. N. 339; 58 S. J. 120**

**Annuity.**

*Charge on income or capital—Arrears—Trust to pay out of income—Gift of corpus "subject nevertheless to the said annuities"—Will—Construction.*

*In re YOUNG. BROWN v. HODGSON*  
**Parker J. [1912] 2 Ch. 479; 81 L. J. (Ch.) 817**

**Appointment.**

*See POWER OF APPOINTMENT.*

**Apportionment.**

*See APPORTIONMENT.*

**Capital and Income.**

*Tenant for life and remainderman—Debentures guaranteed by guarantee society—Default in payment of capital and interest—Voluntary liquidation of society—Scheme—Postponement of claims for principal to subsequent date—Partial payment of interest in meantime—Right of tenant for life.*

R. P., by his will dated in 1904, gave his residuary personal estate upon trust for his two sons for life with remainder to their respective children or issue. His trustees were empowered to retain any securities or investments upon which any portion of the personal estate might be laid out, and by cl. 21 of the will the testator declared that the income should be applied "as if the same were income arising from the proceeds of conversion, no part thereof being liable to be retained as capital." Part of the testator's residuary estate consisted of debentures guaranteed as to capital and interest by a guarantee society. Some of the cos. by which the debentures were issued had made default in payment of interest, some in payment of capital, and some of both capital and interest. In Dec., 1909, the guarantee society went into voluntary liquidation, and the winding-up was now under the supervision of the Court. On July 28, 1910, a scheme of arrangement was sanctioned under which the time for payment of claims of creditors for principal and the full contractual interest thereon was postponed till Dec. 31, 1918, and it was further provided that "in all cases of default in payment in full of interest on the debentures of any company down to Dec. 31, 1918, the liquidators of the society should pay or make up such interest to 3 per cent. per annum on the principal moneys secured by the debentures.

The question on this appeal was how moneys

**WILL (Capital and Income)—continued.**

received of to be received by the trustees of the will by way of interest at 3 per cent. under the scheme ought to be applied as between tenant for life and remainderman.

Joyce J. held that these payments ought to be apportioned as between capital and income.

One of the tenants for life appealed.

The C. A. allowed the appeal. They held, having regard to cl. 21 of the will, that the tenants for life were entitled to the whole of the payments of interest at 3 per cent. received by the trustees under the scheme. *In re PENNINGTON. PENNINGTON v. PENNINGTON* - C. A. [1913] W. N. 327; 30 T. L. R. 106

*Tenant for life and remainderman—Preferential shares—Cumulative preferential dividend—Arrears—Death of life tenant—Future dividends—Apportionment.*

A testatrix, who died on Sept. 30, 1909, devised and bequeathed her property in trust for a life tenant and remaindermen.

She held 375 preferential shares of 5l. each in a limited co. carrying a cumulative preferential dividend of 5 per cent. per annum.

The life tenant died on June 8, 1912.

The preference dividends were declared and paid in full up to the year ending Jan. 31, 1908, and for the year ending Jan. 31, 1909, 2 per cent. was declared and paid.

For the subsequent years, which included the whole of the life tenancy, no dividend was declared or paid.

The co. had, however, built up a large sinking fund to replace the purchase value of leaseholds and had carried considerable sums to reserve, and there was a possibility that payment of dividends might be resumed in some future year.

The trustees of the will proposed to hand over the 375 shares to the remaindermen, who had already received the rest of the estate, but the life tenant's executors contended that they were entitled to a charge for their arrears either as against all future dividends, or, at all events, against any back dividends declared and paid in respect of the arrears incurred during the years including the life tenancy.

Astbury J. held that the life tenant's executors had no claim, and the remaindermen were absolutely entitled.

*In re Taylor's Trusts, Matheson v. Taylor* [1905] 1 Ch. 734, 738, and *In re Armitage, Armitage v. Garnett* [1893] 3 Ch. 337, 346, followed. *In re Griffith, Carr v. Griffith* (1879) 12 Ch. D. 655, and *Bulkeley v. Stephens* [1896] 2 Ch. 241, 249, distinguished. *In re SALE. NISBET v. PHILIP* - Astbury J. [1913] W. N. 308

*Tenant for life and remainderman—Shares in company—Reserve fund—Bonus dividend—New shares—Option—Capital or income.*

The capital of a co. was divided into 10,000 shares of 10l. each, of which 3728 shares only had been issued and were fully paid up. The co. was very prosperous and the market value of its shares was 30l. each. In Feb., 1912, the reserve fund of the co. exceeded 50,000l., and the directors proposed a scheme for distributing part of the reserve fund, representing accumulated

**WILL (Capital and Income)—continued.**

undivided profits, amongst the shareholders, so that every shareholder would get a bonus of one new fully-paid 10l. share for every existing share held by him. Accordingly, resolutions were passed by the co., (a) empowering the directors to declare a bonus dividend out of the reserve fund, and (b) sanctioning the distribution of a bonus dividend of 10l. per share out of the reserve fund, authorizing the further issue of 3728 shares of 10l. each out of the unissued capital of the co. to be allotted pro rata amongst the existing shareholders, and directing that such new shares be paid up in full forthwith. The directors then sent a circular letter to every shareholder with a warrant for the bonus dividend on 11s shares, informing him of an allotment to him of his proportion of the new shares and giving him an option to accept or refuse the allotment, and stating that if he accepted the allotment, he was to indorse and return the dividend warrant to the co. to be applied in payment of the new shares. Trustees of a testator's will held 200 shares of the co., and on receipt of the circular letter, accepted their allotment of 200 new shares, indorsed and returned their bonus dividend warrant for 2000l., and afterwards sold the new shares at a profit. The question then arose whether, as between the tenants for life and remainderman under the will, the bonus dividend was capital or income:—

Held, on the evidence, that the co. intended to capitalize the reserve fund and not to distribute it as a bonus dividend, and therefore that the whole of the bonus dividend was capital of the testator's estate.

The principle of *Bouch v. Sproule* (1887) 12 App. Cas. 385, applied. *In re EVANS. JONES v. EVANS* - Neville J. [1913] 1 Ch. 23; 82 L. J. (Ch.) 12; 19 Mans. 397; 107 L. T. 604;

[1912] W. N. 242

**Charge.**

*Charge of legacies and debts on specific realty and personality in foreign country—Mixed fund—Non-exoneration of residuary personality—Rule of construction—Order of administration—Will—Construction.*

By his will made in 1905 the testator, after appointing executors and trustees, gave certain legacies free of duty, and subject to the payment of the said legacies and duties, and his funeral and testamentary expenses, and debts, he devised and bequeathed all his real estate situate in the Argentine Republic, including therein chattels real and land of whatsoever nature, together with farming stock, crops, and household and farming effects and consumable stores and provisions in or about his real estate in the Argentine, unto his trustees upon trust to sell, and after payment of the expenses of such sale to pay the residue to the children of his two brothers in equal shares; and the testator devised and bequeathed the residue of his real and personal estate to his trustees in trust for his nephew, the plt.

The testator died in 1910, domiciled in England, and on a question being raised on summons whether the testator had charged his real and personal estate in the Argentine with

**WILL (Charge)—continued.**

the payment of legacies, duties, and debts, in exoneration of his residuary estate :—

*Held*, (i.) that, on the true construction of the will, the charge was confined in its operation to the Argentine property ;

(ii.) that the rule of construction which required that there must be found in the will an intention not only to charge the realty, but to discharge the personality, applied to realty situate outside the jurisdiction ;

(iii.) that the fund charged was not a true mixed fund within the authority of *Roberts v. Walker* (1830) 1 Russ. & My. 752, inasmuch as there was no trust for conversion of the whole real and personal estate for the purposes of satisfying the charge.

*Held*, therefore, that the devise of real estate in the Argentine charged with these payments made it an auxiliary fund to the personality, but did not operate to exonerate the personality from its primary liability.

But *held* that, as the rule of construction applicable to realty had no application to the personality, the concurrent charge of legacies and debts on the specifically bequeathed personality did exonerate the residuary personality from its primary liability. *In re SMITH. SMITH v. SMITH* - Eve J. [1913] 2 Ch. 216 : 108 L. T. 952 ; [1913] W. N. 170

**Charity.**

See CHARITY and below, **Misdescription and Trust.**

**Class.**

See below, **Legacy.**

**Codicil.**

*Gift of residue to forty-six named persons—Codicil—Revocation of gift to two of the number—Confirmation of will—No intestacy—Will—Construction.*

By his will, dated in 1906, the testator gave the proceeds of sale of his residuary real and personal estate upon trust to be divided equally between forty-six named persons, described in the will as being children, or the widows or children of deceased children, of his and his wife's brothers and sisters, including T. W. and F. W. By a codicil he revoked the gifts of the shares in his residuary estate to T. W. and F. W., and in all other respects confirmed his will :—

*Held* that, although the gift was not a gift to a class, there was no intestacy as to any portion of the residue, but that the whole residue passed under the will, as altered and republished by the codicil, to the persons named in the will omitting F. W. and T. W.

*Cheslyn v. Cresswell* (1763) 3 Bro. P. C. 246 distinguished. *In re WHITING. ORMOND v. DE LAUNAY* - Joyce J. [1913] 2 Ch. 1. 82 L. J. (Ch.) 309 ; 108 L. T. 629 : [1913] W. N. 144 ; 57 S. J. 461

**Contingent Interest.**

See below, **Legacy.**

**Conversion.**

See CONVERSION.

**WILL—continued.****Debts.**

— Mixed fund—Charge of legacies and debts upon specific realty and personality in foreign country—Exoneration of general residuary estate—Order of administration.

See above, **Charge.**

— Right of principal to indemnity by surety against liability—Will.

See PRINCIPAL AND SURETY.

**Devise.**

*Absolute Gift*, col. 678.

*Estate Tail*, col. 678.

*Failure*, col. 679.

*Misdescription.* See below, **Misdescription.**

*Residue*, col. 680.

*Rule Against Perpetuities*, col. 680.

*Vesting*, col. 681.

**Absolute Gift.**

*Construction—Absolute gift of freeholds—Gift of income of same freeholds for maintenance—Period when vesting is to take place—Supplying words—Implication to be drawn from previous gifts—Ultimate gift inoperative.*

Where by his will a testator bequeaths his freehold to his sons, and subsequently gives all the income of the same freeholds to his wife for the maintenance of his children, and declares that if his wife should die before his youngest child shall have attained twenty-one, the property is not to be divided, until such youngest child has attained twenty-one, and then proceeds as follows : " And in case that my children should all die and leaving no issue, I give the property share and share alike to my nephews and nieces then surviving," it was held on the death of the wife leaving two unmarried children her surviving, that such two children took their respective shares of the testator's freeholds absolutely, because the Court held that on the construction of the whole will the gift over was not intended to take effect, unless all the children died in the lifetime of their mother. *In re MITCHELL. MITCHELL v. MITCHELL AND OTHERS*

*Farwell L.J.* 108 L. T. 180 ; 57 S. J. 339

**Estate Tail.**

*Devise to one and "his lawful eldest male issue"—Gift over "in default of male issue . . . and not attaining lawful age"—Nomen collectivum.*

A testator, by his will made in 1848, devised fee-simple lands to trustees "for the use of my grandson G., . . . and his lawful eldest male issue, . . . and in default of male issue of the said G., and not attaining lawful age, in that case then to go to my grandsons D. and H. in equal divisions, and their lawful heirs" :—

*Held*, that the words "lawful eldest male issue" should be construed as nomen collectivum, the word "eldest" indicating the order of succession ; and, accordingly, that G. took an estate in tail male.

*Lovelace v. Lovelace* (1885) Cro. Eliz. 40,



**WILL (Devise)—continued.**

and *Sheridan v. O'Reilly* [1900] 1 I. R. 386, distinguished.

*Lewis v. Puxley* (1840) 16 M. & W. 733, and *Doe d. Tremethick v. Permeven* (1840) 11 A. & E. 431, applied. *In re FINLAY'S ESTATE* - **Wylie J.** [1913] 1 I. R. 143

*Legal devise—Technical words—A. and "his issue male in succession"—Words of explanation—Intended devolution explained—Technical words unexplained—Rule of construction—Estate tail.*

Technical words of devise must be construed in their technical sense, unless the context clearly shews in what other sense the testator intended to use them.

• If actually used in their technical sense, they must be given their proper legal effect, however inconsistent with the testator's expressed intention as to the devolution of his estate.

A testator devised his real estate to the plt., a bachelor, "and his issue male in succession, so that every elder son and his issue male may be preferred to every younger son and his issue male, and so that every such son may take an estate for his life with remainder to his first and every subsequent son successively according to seniority in tail male, and on failure of such issue" over.

This devise was followed by a name and arms clause requiring every person "entitled in possession as beneficial tenant for life or in tail under the limitations herein contained" to assume the testator's name and arms:—

*Held*, that the plt. was entitled to an estate in tail male in possession.

*Jessou v. Wright* (1820) 2 Bli. 1, 57; *Roddy v. Fitzgerald* (1858) 6 H. L. C. 823, 872, 877; *Van Grutten v. Foxwell* [189] A. C. 658, 672, 684; and *In re Keane's Estate* [1903] 1 I. R. 215, 224, 225, applied. *In re SIMCOE. VOWLER-SIMCOE v. VOWLER* - **Swinfen Eady J** [1913] 1 Ch. 552; 82 L. J. (Ch.) 270; 108 L. T. 891; [1913] W. N. 124; 67 S. J. 353

**Failure.**

*Life estate—Remainder to "my nearest male heir"—"My nearest and eldest male relative"—No male heir—Heiress-at-law—Intestacy—Will—Construction.*

The testator, a bachelor, devised real estate to a trustee and his heirs in trust to pay the rents and profits to H. H. M. for life and after his decease to convey, assign, and assure the same "unto my nearest male heir and should there be two or more in equal degree of consanguinity to me, then I direct the said" trustee "to convey assign and assure the same unto the eldest of my male kindred for the term of his natural life with remainder to the heirs of the body of my eldest male relative." The testator bequeathed the residue of his personal estate to his trustee in trust for H. H. M. for life, expressing a desire that he should not mortgage or anticipate the same, but assist the trustee in keeping the real estate in such repair as might be necessary for preserving its value "and keeping up the remainder in trust for my nearest and eldest male relative" who should be such at the death of H. H. M.

**WILL (Devise)—continued.**

The deft. Mrs. W. was the heiress-at-law of the testator both at his death and the death of H. H. M.

The nearest male relative of the testator at the time of his death was the son of a female first cousin, and at the time of H. H. M.'s death was the son of a daughter of the same cousin:—

*Held*, affirming the decision of *Joyce J.* [1912] 2 Ch. 430, that the devise failed and the testator's heiress-at-law was entitled. *In re WATKINS. MAYBERY v. LIGHTFOOT* C. A. [1913] 1 Ch. 376; 82 L. J. (Ch.) 240; 108 L. T. 827; [1913] W. N. 54

**Misdescription.**

See below, **Misdescription.**

**Residue.**

*Devise—Specific dispositions of entire property at date of will—Residuary legatees—Real property purchased subsequent to date of will.*

By his holograph will made in Jan., 1912, the testator appointed his two daughters "to be my residuary legatees to any of my belongings wherever found and not already mentioned in this will." The testator then made numerous specific dispositions to his son and his two daughters of his real and personal property, comprising in fact all the property that he had at the date of his will. In the course of these dispositions he used the words "leave and bequeath" in several instances where real property was disposed of. Subsequently to the date of his will, the testator purchased certain real property in the Isle of Man, where he was domiciled. One question raised upon a summons by the plt., as executrix of the testator, was whether the two daughters, as residuary legatees, and if so whether as joint tenants or tenants in common, were entitled absolutely to the subsequently purchased realty, or whether the testator died intestate in respect of the same.

*Martin v. Harding*, [1907] 1 Ch. 465, distinguished.

Eve J. held, though with considerable doubt, that the context was wide enough to sweep in the residuary realty. He held, therefore, on the construction of the will, that the residuary realty passed to the two ladies as tenants in common. *In re STEPHEN. STEPHEN v. STEPHEN* - **Eve J.** [1913] W. N. 210

**Rule Against Perpetuities.**

*Trust to convey to uses subsisting in another estate at death of tenant for life.*

Testator was tenant for life in possession of the W. estate and owner in fee of the D. estates. By his will he devised his D. estates to trustees upon trust to pay the rents and profits to his wife during her life and after her decease upon trust to raise two sums of 4000*l.*, and subject thereto upon trust to assure the said estates "to such uses for such estates and with and subject to such powers and provisos as under and by virtue of" two deeds of July 5, 1854, and Feb. 26, 1859, "and all mesne assurances acts and operations of law" should at the time of the death of his wife be subsisting and capable of taking

**WILL (Devise)—continued.**

effect of and concerning the W. estate. The testator died in 1875, and shortly afterwards there was a resettlement of the W. estate. The widow died in 1912. At her death there was nothing in the then subsisting uses, powers, and provisos of the W. estate which if inserted in the testator's will would have given rise to objection on the ground of remoteness:—

*Held*, reversing the decision of Eve J., that the trusts declared of the D. estates after the death of the widow were valid.

*Per* Buckley L.J.: *Lord Dungannon v. Smith* (1846) 12 Cl. & F. 546, is not an authority for the proposition that the rule against perpetuities is infringed by uncertainty at the testator's death whether the limitations introduced by reference will or will not exceed the rule. *In re FANE, FANE v. FANE - C. A. [1913] 1 Ch. 404; 82 L. J. (Ch.) 225; 108 L. T. 288; [1913] W. N. 61; 29 T. L. R. 306; 57 S. J. 321*

**Vesting.**

*Construction—Executory devise over on a contingency—Restricted to time prior to period of distribution—Vesting of estate.*

In a will, where there is a period of distribution, a gift over on death means death before the period of distribution.

A testator devised all his property to trustees on trust for the support and maintenance of his wife and daughter, and any other of his children, and directed the trustees, when any child or children should attain twenty-one years of age or marry, to apportion the property equally among them, subject to an annuity to his wife. The will contained a proviso directing that, in the event of the said daughter dying during the lifetime of her mother, she should have a life use of the estate, and on her decease it should become the absolute property of testator's brother. The daughter attained twenty-one years of age and married, but predeceased her mother.

*Held*, that the property vested absolutely in the daughter at twenty-one or marriage, and was not divested by the proviso. *In re KERR'S ESTATE - Ross J. (Ir.) [1913] 1 I. R. 214*

**Disclaimer.**

*See* DISCLAIMER and below, **Marshaling Asscts.**

**Estate Duty.**

*See* REVENUE.

**Estate Tail.**

*See* above, **Devise.**

**Execution.**

— *Affidavit of attesting witness.*

*See* IRISH LAW—**Will.**

*Probate—Will propounded by executor—Neither verbal nor written instructions by testatrix—Assent to questions by nods and pressure of hands—Will pronounced for—Costs of opposing parties—Principles considered.*

A testatrix, who was incapable of speaking or writing owing to an apoplectic stroke, only assented by nods of her head and several

**WILL (Execution)—continued.**

pressures of her hand in answer to questions put to her by the person drawing her will. She made a mark with a pen in lieu of a signature:—

*Held*, that if the jury believed the document was in accordance with the wishes of the testatrix, they could find in favour of it.

Further *held*, while the opposing parties were entitled to have the will proved in solemn form, nevertheless they were not justified in fully contesting and must bear their own costs of the action. *IN THE ESTATE OF ANN HOLTAM. GILLETT v. ROGERS AND OTHERS.*

**Bargrave Deane J. 108 L. T. 732**

**Executor.**

— One of two executors and trustees—Pledge—Validity—Lapse of time—Assent to trust of will.

*See* EXECUTOR.

*Specific gift of foreign property—Executors and trustees—Assent of executors—Cost of realization—French succession duty—Power—Divisibility—Perpetuity.*

*In re DE SOMMERY (COUNTESS). COELENBIER v. DE SOMMERY - Parker J. [1912] 2 Ch. 622; 82 L. J. (Ch.) 17; 107 L. T. 253, 823; [1912] W. N. 254; 57 S. J. 78*

**Forfeiture.**

*Construction—Married woman—Gift of annuity—Restraint upon anticipation—Assignment—“Whether under disability or not”—Mortgage of annuity during coverture—Ineffectual assignment—No forfeiture.*

A testator by his will bequeathed an annuity to his daughter for life without power of anticipation during coverture and declared that if his daughter, whether under any disability or not, should assign, dispose of, or charge the annuity bequeathed to her or any part thereof, or should become bankrupt or do or suffer anything whereby the said annuity or any part thereof should become payable to or vested in some other person, then and in every such case the said annuity should immediately thenceforth cease as if she were dead. The daughter while still under coverture executed an assignment of her annuity by way of mortgage:—

*Held* (Kennedy L.J. dissenting), that, the daughter being precluded by reason of her coverture and the restraint upon anticipation from making an effectual assignment, the assignment was invalid apart from the forfeiture clause in the will, and that therefore no forfeiture was effected thereby.

Decision of Farwell L.J., sitting as an additional judge of the Ch. Div., 108 L. T. 179, affirmed. *In re ADAMSON. THE PUBLIC TRUSTEE v. BILLING - C. A. 109 L. T. 25; [1913] W. N. 188; 29 T. L. R. 594; 57 S. J. 610*

*Determinable life interest—Till tenant for life “have his affairs liquidated by arrangement or composition”—Or his income or part thereof “become payable to some other person”—Receiving order—Discharge of order—Bank-*

**WILL (Forfeiture)—continued.**

*Bankruptcy Act*, 1869 (32 & 33 Vict. c. 71), ss. 125, 126—*Bankruptcy Rules*, 1886, r. 208.

Where a life interest in a trust fund is to determine on the happening of any event whereby the income or any part thereof would, if belonging absolutely to the tenant for life, become "payable to some other person," the life interest determines, if a receiving order is made against the tenant for life and any income comes to the hands of the trustees before it is discharged.

Whether the same result will follow, if no income comes to hand while the receiving order is in force, *quære*.

*In re Sartoris' Estate* [1892] 1 Ch. 11, explained and followed.

A testator, who made his will and died in 1883, directed trustees to pay the income of a trust fund to a son, until he should die or "have his affairs liquidated by arrangement or composition," or do or suffer something whereby the income or part thereof would if belonging absolutely to him "become payable to some other person." In Dec., 1910, a receiving order was made against the son. In Feb., 1911, the creditors having accepted a scheme for payment by instalments of their debts in full with provision for a composition of 7s. 6d. in the event of the debtor's death, the Court discharged the order. Upon a summons to determine whether the debtor had forfeited his life interest:—

*Held*, that the debtor was not by the scheme "having his affairs liquidated by arrangement or composition," those words contemplating liquidation by arrangement or composition as recognized by the Bankruptcy Act, 1869; but that, assuming that while the receiving order was in force, moneys payable to the debtor came to the trustees' hands, the receiving order operated to make those moneys "payable to some other person," and a forfeiture of the life interest had taken place. *In re LAYE. TURNBULL v. LAYE*

*Eve J* [1913] 1 Ch. 298; 82 L. J. (Ch.) 218; 20 Mans 124; 108 L. T. 324; [1913] W. N. 44; 57 S. J. 284

*Vested interest—Condition subsequent—Not to live with or be under control of father—Validity—Against public policy—Uncertainty.*

*In re SANDBROOK. NOEL v. SANDBROOK*  
*Parker J.* [1912] 2 Ch. 471; 81 L. J. (Ch.) 860; 107 L. T. 148; 56 S. J. 721

**Gift Over.**

*Gift of income for life or until a certain event—Gift over on that event happening—Non-happening of event—Determinable life interest—Construction of will.*

A testator gave one fourth of his residue to trustees in trust to pay the income thereof to his daughter E. during her life or until she should receive the legacy of 20,000l. left to her under the will of D. (who was then dead), and then that "the one fourth share of my residuary estate and the income arising therefrom which I have bequeathed to her" should fall into residue and be divided between his three other children. E. survived the testator and died without receiving the legacy, which could never be paid owing to the insolvency of D.'s estate:—

**WILL (Gift over)—continued.**

*Held*, (1.) that the words of the gift over were not sufficient to enable the Court to imply an absolute gift in any event to E.; (2.) that E. took only a terminable life interest; and (3.) that on E.'s death the gift over took effect.

The principle of *Lusford v. Cheeke* (1684) 3 Lev. 125; *Browne v. Hammond* (1858) John. 210; *Eldes v. Eldes* (1856) 3 D. & W. 441; and *In re Cane* (1890) 60 L. J. (Ch.) 36, applied. *In re SEATON. ELLIS v. SEATON*

*Parker J.* [1913] 2 Ch. 614

**Hotchpot Clause.**

*Several settled funds—Trusts by reference—Settlement—Construction.*

A testator gave three separate funds to trustees upon trusts, fully set out in each case, for his three children respectively for life, with remainder to their issue as they should respectively appoint, and in default of appointment to their respective children in equal shares with a hotchpot clause. In each case the testator gave the fund over, in failure of the express trusts, upon trusts in favour of his other children and their issue successively, by reference to the trusts expressly declared in favour of such children and their issue concerning the fund given in trust for them in the first instance.

In the events which happened, a granddaughter of the testator became entitled to one fund by appointment, and to a share in another fund in default of appointment:—

*Held*, affirming the decision of *Neville J.* [1913] 1 Ch. 303, that the granddaughter was entitled to take her share in the unappointed fund without bringing into hotchpot the fund which she took by appointment. *In re MARKE WOOD, SEN. In re MARKE WOOD, JUN. WOODHOUSE v. WOOD - C. A.* [1913] 2 Ch. 574; 109 L. T. 347; [1913] W. N. 259; 57 S. J. 835

*Supplying omission by inference—Will—Construction.*

The testator directed three several sums which he had charged upon his real estate to be raised and held upon the ordinary trusts of a settled legacy in favour of each of his cousins A., B., and C. and her issue. Subject to the charge he devised his real estate upon certain limitations, which had since determined, with an ultimate trust for sale and division of the proceeds equally between such of his five named cousins, including A., B., and C., as should be living, when the trust for sale came into operation, but subject to the following provision for hotchpot: "but so that if" A., B., and C. "or any of them shall then be living or shall have previously died leaving issue then living, such of the said sums . . . hereinbefore directed to be set apart for their benefit as shall have been so set apart for the benefit of the one or more of them so dying and her issue shall be brought into hotchpot and accounted for in the division hereby directed to be made of the net proceeds of my family estate." The will contained a subsequent declaration that the child or children attaining twenty-one, or if daughters marrying, of such of his five cousins as should be dead, when the trust for sale came

**WILL (Hotchpot Clause)—continued.**

into operation, should take the share in the net proceeds of his family estate which his, her, or their parent would have taken, if such parent had not died before the trust for sale had come into operation.

C. died before the trust for sale came into operation leaving a child still living, and the question to be determined was whether A. and B., as well as C.'s child, were bound to bring into hotchpot their settled legacies:—

*Held*, that the later portion of the hotchpot clause must be read as applying to each of the two contingencies mentioned in the introductory portion, and that in the division of the proceeds of the testator's real estate A. and B., as well as C.'s child, must bring their settled legacies into hotchpot. *In re HAYGARTH. WICKHAM v. HAYGARTH*

Joyce J. [1913] 2 Ch. 9; 82 L. J. (Ch.) 328; 108 L. T. 756

• **Residue—Advances to children—Interest—Computation pending division.**

A testator directed his trustees to pay the income of one moiety of his residuary estate to his widow reducible on her second marriage, and, subject thereto, directed them to stand possessed thereof upon trust for his children in the shares mentioned. The shares were settled with a protected life interest with remainders over.

The testator directed that in computing the share of his eldest son, such son was to bring into hotchpot a sum of 2250*l.*—as to which 1700*l.* had been paid by the testator and 550*l.* was paid after his death by his executors—under the testator's guarantee of the son's banking account, and a similar direction was given as to 1000*l.* advanced to another son:—

*Held*, that for the purpose of ascertaining the proportions of the shares, the various sums paid by the testator and his executors to and for his two sons, respectively ought to be added to the value of the moiety of the testator's estate the income of which was not directed to be paid to his widow, and from the aggregate capital so ascertained the sums directed to be brought into account ought to be deducted from the shares of such two sons, and the income divided from the testator's death in the proper proportions of the respective shares of capital so ascertained.

*In re Hargreaves, Hargreaves v. Hargreaves* (1903) 88 L. T. 100, considered, and the method of computation adopted therein applied. *In re HART. HART v. ARNOLD - EVE* J. 107 L. T. 757

**Interest.**

See below, **Legacy.**

**Intestacy.**

See above, **Accumulate, Direction to, Codicil, and Devise.**

**Investment Clause.**

*Construction—Investment by trustees—Power to invest “as they should think desirable, but not in the British funds”—Purchase of freeholds.*

A will contained the following investment clause:—“My trustees being at liberty to sell all my ships, houses, and other property of mine,

**WILL (Investment Clause)—continued.**

and invest same, as they think most desirable, but not in the British funds, my trustees to be free from all liability in investing any of the money received for the sale of any of my property”:—

*Held*, that the above clause authorized the trustees to invest the proceeds of sale in the purchase of freehold lands in England and Ireland. *In re O'CONNOR. GRACE v. WALSH*.

Meredith M.R. [1913] 1 I. R. 69

**Legacy.**

*Abatement, col. 686.*

*Class, col. 686.*

*Contingent Interest, col. 687.*

*Demonstrative Legacy, col. 688.*

*Disclaimer. See DISCLAIMER.*

*Interest, col. 688.*

*Lapse. See below, Misdescription.*

*Misdescription. See below, Misdescription.*

*Revocation, col. 689.*

*Specific Legacy. See below, Words.*

*Substitutional Gift. See below, Substitutional Gift.*

**Abatement.**

*Release of annuity under a settlement—Deficiency of assets.*

W. by settlements declared that moneys paid by him to the trustees of an orphanage should be held by them upon trust for investment and to pay 5 per cent. per annum on the invested capital to him for life, and after his death to his maid-servant S. for life, and after the death of the survivor, upon trust to pay the capital and the income to the treasurer for the time being of the orphanage. By his will, W. gave 1000*l.* to S. on condition that she released the trustees from all claims to income under the settlement and accepted the legacy in place thereof. The estate of the testator was insufficient to pay all the legacies thereby given in full:—

*Held*, that if S. elected to take the legacy, it would abate with the other legacies and not be entitled to priority over them.

Observations on *Davies v. Bush* (1831) You. 341, and *In re Wedmore* [1907] 2 Ch. 277. *In re WHITEHEAD. WHITEHEAD v. STREET*

Farwell L.J. [1913] 2 Ch. 56; 82 L. J. (Ch.) 302; 108 L. T. 368; [1913] W. N. 40; 58 S. J. 323

**Class.**

*Nearest of kin of deceased husband and wife—Gift to.*

*In re SOPER. NAYLOR v. KETTLE.*

[1912] 2 Ch. 467; 81 L. J. (Ch.) 326; 107 L. T. 525

*Condition that a female donee should be a widow and a male donee a widower at period of distribution—Death of female donee before that period—Survival of male donee and his wife.*

*In re LAING. LAING v. MORRISON*

Parker J. [1912] 2 Ch. 386; 81 L. J. (Ch.) 686; 107 L. T. 822; 57 S. J. 80

**WILL (Legacy)—continued.***Contingent Interest.*

*Maintenance of infant—Legacy if he shall attain twenty-one—Direction to apply income of residue for benefit in certain event only—Interest on legacy.*

Testator, who carried on business in partnership and who died in 1907, by his will, dated Mar. 9, 1903, gave to his elder son, if he should not be a partner in the said business at the testator's death and if he should attain twenty-one, a legacy of 15,000*l.*; to his younger son, if he should attain twenty-one, the sum of 10,000*l.*; and to his three daughters respectively, if they should respectively attain twenty-one or marry, three sums of 7000*l.*, 6000*l.* and 6000*l.* respectively; and subject thereto and to other specific and pecuniary bequests, the testator gave all his real estate and his personal estate not otherwise disposed of to trustees in trust for sale and conversion and to hold the residuary proceeds of sale in trust to invest the same, and out of the income of the trust premises to pay an annuity of 1000*l.* a year to his widow, and subject thereto to stand possessed of the trust premises upon trust, if his elder son should at the date of the testator's death be a partner in the said business (which event did not happen), in trust for all his children, other than his elder son, who being sons should attain twenty-one, or being daughters should attain that age or marry; and upon trust, if his elder son should not be a partner in the said business at the date of the testator's death, to pay the income or apply the same for "the benefit of" all the testator's children in equal shares, until the elder son should become a partner or should attain the age of thirty, and, if when he attained that age, he should not be a partner, then the trustees should stand possessed of the trust premises upon trust for all the testator's children who being sons should attain twenty-one or being daughters should attain that age or marry; but, if his elder son should become a partner before he attained the age of thirty, or should die before he attained that age without becoming a partner, then in trust for all the testator's children, other than his elder son, who being sons should attain twenty-one or being daughters should attain that age or marry.

The elder son attained twenty-one on Jan. 28, 1913. He was not a partner in the said business. The three daughters attained twenty-one in 1905, 1907 and 1908 respectively. The younger son was an infant and would not attain twenty-one till Feb. 25, 1917.

The residuary estate produced an annual income of some 2500*l.* after providing for the widow's annuity.

This was an adjourned summons taken out by the trustees for the determination of the question whether the children were entitled to interest on their pecuniary legacies.

Warrington J., after referring to *In re George* (1877) 5 Ch. D. 837, 843, said that in the circumstances existing at the testator's death and still existing, the available income of the residuary estate, amounting to some 2500*l.* a year, was directed to be applied for the benefit

**WILL (Legacy)—continued.**

of the legatees. In his Lordship's opinion, so long as that trust was in force, there was another fund provided for maintenance, and it made no difference that in an event which had not yet happened that trust might determine. The four elder children, therefore, were not entitled to any interest on their legacies during their respective minorities, and the younger son was not now entitled to interest on his legacy. It was unnecessary now to determine what would happen, if the elder son were to die or become a partner during the minority of the younger son, or the point which arose in *In re Moody, Woodroffe v. Moody* [1895] 1 Ch. 101. There would be a declaration that the children who had attained twenty-one were not entitled to interest on their legacies, and that under the present circumstances no interest was payable on the legacy to the younger son without prejudice to any question which might arise hereafter. *In re STEWART. STEWART v. BOSANQUET - Warrington J. [1913] W. N. 183*

*Demonstrative Legacy.*

*Reversionary fund—No time fixed by will for payment—Date from which interest runs.*

WALFORD v. WALFORD H. L. (E.)  
[1912] A. C. 658; 81 L. J. (Ch.) 828;  
107 L. T. 657; [1912] W. N. 186;  
56 S. J. 631

— Shares—Company—Dividends—Apportionment.

See APPORTIONMENT.

See also above, Capital and Income.

*Disclaimer.*

— Trust legacy—Right to retract—Successive life interests.

See DISCLAIMER.

*Interest.*

*Legacy payable at twenty-one—Power to trustees to apply legacy in or towards maintenance of legatee—Additional funds provided for maintenance—Will—Construction.*

Testatrix, by her will as altered by a first codicil thereto, bequeathed a legacy of 900*l.* to her grand-niece A. A. if she should attain the age of twenty-one years, but so that the trustees should be at liberty in their absolute discretion to apply the whole or any portion of it in or towards her maintenance and education. The testatrix also by her will made provision for the maintenance and education of A. A. out of other funds, and by a fourth codicil thereto she bequeathed to her all the money standing to the credit of her current or deposit account and devised to her a freehold house. A. A. was an infant of the age of thirteen years:—

Held that, the testatrix having made provision for the maintenance and education of A. A. out of other funds, the legacy of 900*l.* only carried interest from the time when she attained the age of twenty-one years.

*Pett v. Fellows* (1733), 1 Swans. 561, n., as explained by Sugden L.C. in *Leslie v. Leslie* (1835) 1 L. & G. 2, Sug. 1, 3, and *In re Churchill*

**WILL (Legacy)—continued.**

[1909] 2 Ch. 431, distinguished. *In re WEST. WESTHEAD v. ASPLAND*, Warrington J. [1913] 2 Ch. 345; 82 L. J. (Ch.) 488; 109 L. T. 39; [1913] W. N. 241

**Lapse.**

See below, **Misdescription.**

**Misdescription.**

See below, **Misdescription.**

**Revocation.**

— Construction—Gift of residue to forty-six named persons equally—Partial revocation by codicil—No express disposition of revoked gift—Confirmation of will. See above, **Codicil.**

**Specific Legacy.**

See below, **Words.**

**Substitutional Gift.**

See below, **Substitutional Gift.**

**Maintenance Clause.**

*Maintenance clause in will ceasing on marriage—Intercal between marriage and attaining twenty-one—Income accruing before marriage—“Contrary intention”—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 43.*

Testator, who died in 1909, directed his trustees to appropriate a share of his estate in favour of one of his daughters, and to hold the same and the accumulations (if any) of income made during her minority and discovery upon trust, from the time she attained the age of twenty-one years or previously married, to pay the income to her during her life and after her death to hold the capital and income or so much thereof respectively as should not have been paid or applied under any trust or power affecting the same in trust for her issue as therein mentioned with a gift over in default of issue; and the testator declared that if at his decease any child or grandchild entitled in expectancy for life or absolutely to a share or the income thereof under his will should be under the age of twenty-one years, or being a female should be unmarried, the trustees might apply the whole or any part of the income of such expectant share of such minor for or towards his or her maintenance, and should invest the residue (if any) of the said income and the resulting income thereof at compound interest, to the intent that such accumulations should be added to the principal share from which the same should have arisen and follow the destination thereof, with power for the trustees to resort to the accumulations of any preceding year and apply the same for or towards the maintenance of any person for the time being presumptively entitled thereto.

The daughter attained the age of twenty-one years on Oct. 1, 1912, having previously married on June 12, 1912. The share consisted largely of property in Australia the income of which did not reach the hands of the trustees in this country for many months after it had accrued

**WILL (Maintenance Clause)—continued.**

due. The trustees had applied income for the maintenance of the daughter down to the date of her marriage, when they ceased to do so. On a summons raising the question whether the trustees had power to apply income accruing down to the date of her marriage for the maintenance of the daughter after that date:—

*Held*, that the maintenance clause in the will did not shew a “contrary intention” so as to exclude s. 43 of the Conveyancing Act, 1881, and that under that section the trustees had power to apply income accruing down to the date of the marriage for the maintenance of the daughter between the date of her marriage and the date of her attaining the age of twenty-one years, but not for any further period.

*In re Thatcher's Trusts* (1884) 26 Ch. D. 426, followed.

*In re Wise* [1896] 1 Ch. 281; 73 L. T. 743, explained. *In re COOPER. COOPER v. COOPER* Farwell L.J. [1913] 1 Ch. 350; 82 L. J. (Ch.) 222; 108 L. T. 293; [1913] W. N. 40; 57 S. J. 389

See above, **Legacy—Interest.**

**Marshalling Assets.**

— Administration—Pecuniary legacies—Personal estate insufficient—Specific devise disclaimed—Real estate descended.

See **ADMINISTRATION—Legacy.**

**Misdescription.**

*Charity—Bequest to Queen's College, Belfast, to found scholarship—Dissolution of college and incorporation of Queen's University of Belfast before date of will—Legatee, whether sufficiently described—Irish Universities Act, 1908 (8 Edw. 7, c. 38).*

Testatrix, by her will dated Feb. 16, 1910, bequeathed 300 l. to “Queen's College, Belfast,” to found a “Magrath Clinical Scholarship for proficiency in reports of cases at the bedside and to be open to medical students of the fourth year who shall be bona fide students at such college.” On Oct. 31, 1909, “Queen's College, Belfast,” had been dissolved under the provisions of the Irish Universities Act, 1908, and by virtue of a charter under the same Act the “Queen's University of Belfast” had been incorporated, and at the date of the will and the death was carrying on substantially the same work in the same place as the former body. There was no evidence whether the testatrix was or was not aware of the dissolution of “Queen's College, Belfast,” or of the incorporation of the “Queen's University of Belfast”:—

*Held*, that for all practical purposes connected with the legacy the two institutions were identical; that under the circumstances (the case being treated as one of misdescription of the legatee) the “Queen's University of Belfast” was sufficiently referred to by the words of the will; and that the legacy took effect in its favour.

*Coldwell v. Halse* (1854) 2 Sm. & Giff. 31, followed:—

*In re MAGRATH. HIRST v. QUEEN'S UNIVERSITY OF BELFAST* Warrington J.

[1913] 2 Ch. 831; 82 L. J. (Ch.) 532; 108 L. T. 1015; 29 T. L. R. 622

**WILL (Misdescription)—continued.***Extant ambiguity—Falsa demonstratio.*

Testator, who died in 1913, by his will made in 1908, appointed an executor and directed "my two freehold cottages or tenements with their appurtenances, situated at Trowbridge, known as Nos. 19 and 20 Castle Street," to be sold by auction and the proceeds to be divided between two of his daughters. He also specifically devised his freehold cottage or tenement known as No. 35, The Conigre, Trowbridge, to one of his sons, and his freehold cottage or tenement known as No. 39, Castle Street, Trowbridge, to another daughter. There was no residuary devise. At the date of his will and death the testator owned freehold premises known as Nos. 19 and 20, Thomas Street, Trowbridge. In addition to No. 35, the Conigre, and No. 39, Castle Street, but Nos. 19 and 20, Castle Street were not and never had been the testator's property:—

*Held*, that in the description of Nos. 19 and 20 the words "Castle Street" ought to be rejected as falsa demonstratio merely, and that Nos. 19 and 20, Thomas Street passed under the specific devise, the testator having no other houses in Trowbridge so numbered. *In re MAYELL*. *FOLEY v. WOOD - Warrington J.* [1913] 2 Ch. 488; 109 L. T. 40; [1913] W. N. 242

See above, **Ambiguity.**

**Perpetuities.**

See above, **Devise.**

**Power of Appointment.**

See **POWER OF APPOINTMENT.**

**Probate.**

See **PROBATE.**

**Revocation.**

See above, **Legacy.**

**Settled Land.**

See **SETTLED LAND.**

**Settlement.**

See **SETTLEMENT.**

**Substitutional Gift.**

*Construction—Gift of income from house property equally between children—Issue of such children to be substituted on the death of each child—Destination of each child's share of rents after death—Implication of cross-remainders substituting issue in the place of their deceased parent—Gift over of the property on the death of the last child.*

Where a testator gave real estate "upon trust to pay the income arising therefrom unto my children in equal shares during their lives or to their issue in case any of them shall die before the others of them, and after the decease of all my children then in trust to hold the same property in trust to sell the same, &c." :—

*Held*, that the principle of *Armstrong v. Eldridge* (1791) 3 Bro. C. C. 215, could be applied to this case, even though there was a clause substituting issue for their deceased parents.

**WILL (Substitutional Gift)—continued.**

*Held*, accordingly, that there was a sufficient indication in the will of an intention on the part of the testator that there should be, so to speak, cross-remainders in respect of this income, the issue being substituted on the death of their parent in respect of such parent's share. *In re TATE. WILLIAMSON v. GILPIN*. 8 Gaat J. 109 L. T. 221; 58 S. J. 119

"Or"—*Substitutional or alternative gift.*

Testator bequeathed leaseholds on trust for each of his daughters for life, "and from and immediately after the decease of my said daughters respectively the part or share of each deceased daughter to be in trust for her or their child or grandchild or other lawful issue living at their or her decease on their respectively attaining the age of twenty-one years."

A daughter who survived testator died, leaving her surviving (1.) eight children, (2.) one grandchild (son of a deceased child), (3.) six other grandchildren (children of living children).

The question was whether the bequest extended, after the death of the tenant for life, to (1.) all her fifteen children and grandchildren, or only to (2.) the eight children and the son of the deceased child, or only to (3.) the eight children.

Eve J. read the bequest as being, after the death of each daughter, in trust for her children living at her death on attaining twenty-one or for her grandchildren living at her death on attaining twenty-one or for other lawful issue living at her death on attaining twenty-one, thus making each class the object of an alternative original gift. The proper construction, in his opinion, was that, if children of a daughter were living at her decease, they took as a class to the exclusion of the other classes. The result was that the deceased daughter's share went in eighths to the eight children surviving her and attaining twenty-one, to the exclusion of the child of her deceased child and her six other grandchildren. *In re ALDERTON. HUGHES v. VANDERSPAR - Eve J.* [1913] W. N. 129

*Survivorship—Gift over—"Other and others."*

Under a gift, in the event of a daughter dying without being married, to the other and others of the testator's daughters by name in equal shares, the words "other and others" will not be read as "survivor and survivors," unless the context requires it.

A testator, having three unmarried daughters, C., J., and L., and one married daughter E. G., directed his trustees to divide the net proceeds of his property between his daughters C., J., and L., in equal shares, their shares to become vested and payable on marriage, the yearly interest to be paid to each in the meantime, and if any of them, the said C., J., and L., should die without being married, then, as well the original share thereby given to her so dying, as any other share which she should have taken by survivorship or accretion should go and belong to the other and others of them and also to the said E. G., in equal shares.

C. married; J. and L. never married. C., E. G., and J. predeceased L.

On the death of L., the question arose, Who

**WILL (Substitutional Gift)—continued.**

was entitled to the fund which represented the shares of J. and L. ?

*Held*, that the words "other and others" should not be read as equivalent to "survivor and survivors," but were to be read in their ordinary meaning, and that the fund was divisible between the representatives of C. and E. G., equally. **STANLEY v. BOND - O'Connor, M.R. (Ir.) [1913] 1 I. R. 170**

**Trust.**

*Gift*, col. 693.

*Conversion.* See **CONVERSION.**

*Trustees*, col. 694.

**Gift.**

*Beneficial interest—Gift to widow for benefit of children.*

A. bequeathed his property to his wife, in the following terms:—"I leave and bequeath all my property, chattels, money, bank shares, and my life insurance, or whatever I am possessed of, or entitled to, to my beloved wife to be disposed of as she may think best, for the good of our children"—

*Held*, that under this bequest, the wife became entitled beneficially to the whole of the property.

*In re BERRYMAN. BERRYMAN v. BERRYMAN M.R. [1913] 1 I. R. 21*

*Beneficial interest or trust.*

A testator bequeathed to his wife his entire worldly effects to be managed as best she could for the benefit of their children:—

*Held*, that the wife took no beneficial interest.

*In re Berryman, Berryman v. Berryman [1913] 1 I. R. 21*, disapproved. *In re HICKEY.*

**HICKEY v. HICKEY - C. A. (Ir.) [1913] 1 I. R. 390**

*Charity—Home for ladies of limited means*

—*If home unnecessary distribution to ladies considered worthy—Residue of estate to be expended as trustees "know to be most in agreement with my desires"—Uncertainty—Secret trust—Communication to one of two trustees—Trust on face of will—Acceptance—Trustee-beneficiary—Parol evidence.*

The testatrix, who died in 1911, by her will, dated Mar. 8, 1900, confirmed by codicil in the year 1903, devised and bequeathed her residuary estate to the plts., Dr. Le P. and his daughter, W. Le P., to convert such portion as should be desirable upon trust for the maintenance of a "temporary house of residence for ladies of limited means." If at any time such home should be unnecessary, the money thus set apart could be distributed by her trustees to ladies they might consider worthy of assistance. The testatrix appointed Dr. Le P. and W. Le P. executors, and directed that her trustees and executors should expend all or any of the residue of her estate "in such manner as they know to be most in agreement with my desires." Dr. Le P. proved that the testatrix in the year 1886 said to him that she intended to provide for his three children, and in the same month that she ex-

**WILL (Trust)—continued.**

cuted her will she handed a duplicate of it to him, stating that it carried out her intentions expressed before. The Court found that from that time until her death the testatrix was intending that her estate should ultimately go to Dr. Le P.'s three daughters:—

*Held*, that the subsequent bequests did not introduce a gift for objects alternative to the primary trust so as to render the whole disposition void for uncertainty.

*Held*, accordingly, the trustees not having a discretion to apply the money to charitable or non-charitable objects, that the primary trust was a good charitable trust to appropriate so much of the testatrix's estate, as might be necessary for the maintenance of the house or home.

The testatrix had definitely communicated to Dr. Le P. before or contemporaneously with making her will her intention already formed that the residue should be disposed of in a particular manner, and he had accepted the trust.

*Held*, therefore, the existence of a trust being disclosed on the face of the will, that it was not necessary that the trust should be communicated to and accepted by all the trustees, and the ultimate residue was held upon trust for the three daughters of Dr. Le P. *In re GARDOM. LE PAGE v. ATT.-GEN. Eve J. 108 L. T. 955*

*Conversion.* See **CONVERSION.**

**Trustees.**

*Art gallery—Bequest to corporation of pictures—If suitable gallery in G.—If not bequest "to provide"—Public subscriptions—Land held by corporation as education authority—Agreement to buy site—Sanction of Court—Maintenance fund—Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 5.*

A testator, who died on Feb. 4, 1909, bequeathed to the plts. his pictures upon trust that (a) if within five years from his death there should be established in G. a free art gallery sufficiently extensive to admit the selected pictures, his trustees should give them absolutely; or (b) the trustees might pay 30,000*l.* to be applied in or towards enlarging a gallery. Provided that if within a specified time a sum had been subscribed which with the 30,000*l.* would be sufficient "to provide" a satisfactory gallery, the fund should be paid over. (c) If his trustees should consider that a satisfactory gallery could "be provided" for the 30,000*l.* without contributions, it might be applied accordingly. The residue was bequeathed to charities. The trustees asked that a provisional agreement between them and the G. Corporation providing for the appropriation by the council, with the approval under s. 5 of the Education Act, 1909, of the Local Government Board, of certain land held by them for educational purposes as a site for the art gallery, the payment of 5000*l.* as its price, the income thereof to be applied for the maintenance of the gallery, the erection of the gallery by the trustees, and its maintenance by the council, might be sanctioned:—

*Held*, that the testator must in clauses (b)



**WILL (Trust)—continued.**

and (6) have contemplated that part of the 30,000*l.* would be applied for maintenance. That the testator had provided for the necessary building and adequate maintenance and endowment, and that therefore the agreement providing for payment of 5000*l.* to the corporation, for the rest of the fund to be expended in the erection, on the site proposed, of the building would be sanctioned. *Re SHIPLEY. MIDDLETON v. GATESHEAD CORPORATION* - *Eve J. 77 J. P.*

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**Power to grant mining leases — Unopened mines.**

J. F. H. Harter, by his will dated May 18, 1905, devised and bequeathed to his trustees all his real and personal estate upon trust to sell and convert and invest the proceeds as therein mentioned, and to pay the income of such investments to his wife during her life, and after her death to his daughter for life, and after the death of his daughter to hold the same upon certain trusts for the benefit of her children. The testator gave his trustees full power to postpone the sale and conversion of any part of his property and directed that the income of the unconverted property should be paid to the person or persons to whom the income of the proceeds of such sale and conversion would for the time be payable or applicable under his will, if such sale and conversion had been actually made. Clause 11 of the will was as follows: "I declare that as regards any real or leasehold property remaining unsold, my trustees may let or demise the same from year to year or for any term of years, at such rent and subject to such covenants and conditions as they shall think fit, and may accept surrenders of leases and tenancies, cut timber, expend money in repairs and improvements, and generally manage the property according to their absolute discretion. . . ."

The testator died on Oct. 20, 1910.

At the date of his death the testator was possessed of a large estate, including mineral property. There were opened and unopened mines on the estate and also a seam or bed of coal lying under about sixty-three acres of land reserved to the testator on a conveyance by him of the surface of the land. This seam was unopened at the date of his death.

This was an originating summons taken out by the widow, the tenant for life, for the determination (inter alia) of the question whether the trustees of the will had power to grant a lease or leases of the above-mentioned unopened seam or bed of coal or any other unworked mines forming part of the testator's estate.

Warrington J. said that in his opinion the case was covered by authority beginning with the statement of law in Co. Litt. 54b, and followed by the dictum of Kindersley V.-C. in *Clegg v. Rowland* (1866) L. P. 2 Eq. 160, 165, and the decision of Joyce J. in *In re Baskerville, Baskerville v. Baskerville* [1910] 2 Ch. 329, followed by Swinfen Eady J. in *In re Daniels, Weekes v. Daniels* [1912] 2 Ch. 90. His Lordship had been referred to *In re*

**WILL (Trust)—continued.**

*Barker, Wallis v. Barker* (1903) 88 L. T. 685, in which Kekewich J. held that trustees had power to grant a lease of unopened mines. It was sufficient to say with regard to that case that it was distinguishable from the present, on the ground that there were no open mines. Kekewich J. was dealing only with unopened mines. In his Lordship's opinion his duty was to follow *Clegg v. Rowland* (supra), *In re Baskerville* (supra), and *In re Daniels* (supra), and to hold that the trustees had no power to grant a lease of any unopened mines forming part of the testator's estate. *In re HARTER. HARTER v. HARTER*

• Warrington J. [1913] W. N. 104; 57 S. J. 444

— Trusts by reference.

See SETTLEMENT.

Vesting.

See above, Devise.

**Will Speaking from Death.**

"Furniture and household effects at present at A."—*Wills Act, 1837* (1 Vict. c. 26), s. 24.

By his will a testator gave T. an annuity of 400*l.* per annum and "all my furniture and household effects at present at A. lodge." He appointed his brother sole executor, and gave him all his residuary estate, and said: "My books, family letters, and relics at present at A. lodge to become the property of the said sole executor." The testator after the date of the will bought a motor-car, which was at A. lodge at the date of his death. The question was whether the motor-car passed under the gift of furniture and household effects "at present at A. Lodge":—

Held, that no contrary intention within s. 24 of Wills Act was shewn, that the will spoke from the date of the death, and that the motor-car passed under the bequest. *In re ASHBURNHAM. GABY v. ASHBURNHAM - Swinfen Eady J.* 107 L. T. 601; [1912] W. N. 234; 57 S. J. 28

**Words.**

"Cash in house"—"Consols"—"Savings bank deposits"—*Post Office money orders—Two and a Half per Cent. Annuities—Local Loans stock—Letter written by testator—Admissibility of evidence—Post Office Act, 1908* (8 Edw. 7, c. 48), s. 23.

A testator left his wife "All cash in House," and to his wife and a daughter in equal shares "all cash in bank, Consols, shares, and savings bank deposits." He made no residuary bequest. At his death he had in the house some coin, and Post Office money orders to the amount about 70*l.* He had also 500*l.* Two and a Half per Cent. Annuities standing in his name at the Bank of England, and 200*l.* of the same annuities and 300*l.* Local Loans Three per cent. stock, the two latter stocks standing in his name in the stock register of the Post Office. He had the last three mentioned stocks also at the date of his will. He had no Consolidated stock either at the date of his will or at his death. He was accustomed to keep money orders to a considerable amount in his

**WILL (Words)—continued.**

house. He had written a letter shortly after the date of his will to his wife in which, in speaking of his property, he mentioned his "Consols":—

*Held*, that the money orders passed to his wife as "cash in house"; that the letter to his wife was admissible in evidence to shew the sense in which he used the expression "Consols"; and that the Two and a Half per Cent. Annuities passed under the bequest of "Consols" and the Local Loans stock passed under the bequest of "savings bank deposits."

*In re WINDSOR. PUBLIC TRUSTEE v. WINDSOR*  
**Warrington J. 108 L. T. 947; [1913] W. N. 176; 29 T. L. R. 562; 57 S. J. 555**

**Gift to "Children"—Exclusion of illegitimate children—Construction of will.**

A testatrix by her will dated in 1911 gave the residue of her property in trust for her brother F. during his life, and after his death in trust for "all or any the children or child of" F. living at the death of the survivor of testatrix and F., "and the children or child then living of any deceased child of his who, whether children or grandchildren, being male attain the age of twenty-one years or being female attain that age or marry."

At the dates of the will and the testatrix's death respectively F. had six illegitimate children living (who had been borne to him by K., to whom he was reputed to be married and who died in 1900), and two legitimate children by his marriage in 1904 with S. K. was throughout supposed to be and was accepted as F.'s wife in the society in which they moved; her six children were received as legitimate children; and the testatrix knew them all and was fond of some of them. The testatrix and F. both died in 1911:—

*Held*, that only the two legitimate children took under the gift.

*In re Brown* (1890), 63 L. T. 159, followed.  
*In re Du Bouchet* [1901] 2 Ch. 441, not followed. *In re PEARCE. ALLIANCE ASSURANCE Co. v. FRANCIS. Sargant J. [1913] 2 Ch. 674; 109 L. T. 514*

**"Issue"**—Residuary gift to brothers and sisters and their issue—Death of tenant for life after all the brothers and sisters—Meaning of the word "issue"—*Prima facie* meaning—Ambiguity—Gift over—Contingent and tested gift.

The rule in *Sibley v. Perry* (1802) 7 Ves. 522, is only a rule which has determined a particular ambiguity in a particular way.

Where there is internal evidence in the will sufficient for the Court to draw an inference that the narrow interpretation of the word "issue," by that rule to mean children only is rebuttable, such inference should be drawn and the broader and *prima facie* meaning of the word "issue," as including all descendants, thereby restored. *Re EMBURY. PAGE v. BOWYER. Sargant J. 109 L. T. 511; 58 S. J. 49*

**Nephews**—Exclusion of nephews of husband of testatrix.

A testatrix appointed "my nephews A. B., R. H. L., and W. H. H." to be the executors and trustees of her will, and gave all her

**WILL (Words)—continued.**

residuary estate to them upon trust for division, "between my nephews and nieces living at the date of my decease" and the children of her nephews and nieces who had predeceased her.

A. B. was a son of a brother of the testatrix. R. H. L. and W. H. H. were nephews of her first husband.

An originating summons raised the question whether the words "nephews and nieces" in the gift of residue included nephews and nieces of the testatrix only, or also included the nephews and nieces of her first husband.

Sargant J. said that, apart from the words appointing the trustees, only the testatrix's own nephews and nieces would take. He was not prepared to say that the single use of the word "nephews" inaccurately in that part of the will justified the interpretation of the same words in the gift of residue in a similarly inaccurate sense. He *held*, accordingly, that only the testatrix's own nephews and nieces and the children of such of them as had predeceased the testatrix took under the gift. *In re GREEN. BATH v. CANNON. Sargant J. [1913] W. N. 328*

**"Ready money standing in my name or to my credit at my bank"**—Money on deposit—Course of business.

Where the evidence shews that by the course of business between the testatrix and her banker money on deposit at her bank was frequently drawn upon by the testatrix, and such drawings were always met in precisely the same manner as drawings upon her current account:—

*Held*, that the gift in her will of "ready money standing in my name or to my credit at my bank" was effectual to pass such moneys on deposit account. *In re RODMELL. SAFFORD v. SAFFORD. Farwell L.J. 108 L. T. 184; 57 S. J. 284*

**WINDING-UP**—Building society.

*See BUILDING SOCIETY.*

—Company.

*See COMPANY—WINDING-UP.*

**WINDOWS**—Breaking—Damage "caused directly by or arising from civil commotion or rioting."  
*See INSURANCE (PLATE GLASS).*

**WITNESS**—Practice—Action tried in Chancery Division with witnesses—Form of order—Appeal—Schedule of evidence—Names of witnesses.  
*See APPEAL—Court of Appeal*

**WORCESTER AND BIRMINGHAM CANAL ACT**  
1791.

*See BRIDGE.*

**WORDS**—"Bank" of river. CHESHIRE LINES COMMITTEE v. HEATON NORRIS U.D.C.  
[1913] 1 K. B. 325

—"Cash in house." *In re WINDSOR. PUBLIC TRUSTEE v. WINDSOR. 108 L. T. 947*

—"Children." *In re PEARCE. ALLIANCE ASSURANCE Co. v. FRANCIS*  
[1913] 2 Ch. 674

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- "Coachman." *LONDON C. C. v. ALLEN*  
[1913] 1 K. B. 9
- "Company." *DUNBAR v. HARVEY*  
[1913] 2 Ch. 530
- "Company, Private." *In re WHITE.*  
*THEOBALD v. WHITE*  
[1913] 1 Ch. 231
- "Company, Public." *In re WHITE.*  
*THEOBALD v. WHITE*  
[1913] 1 Ch. 231
- "Contract of service." See **INSURANCE**  
(NATIONAL) and **WORKMEN'S COMPENSATION—Workman.**
- "Contrary intention" expressed in settlement  
*In re HANBURY'S SETTLED ESTATE*  
[1913] 2 Ch. 357
- "Debts." See **PRINCIPAL AND SURETY.**
- "Department." *PICKLES v. FOSTER*  
[1913] 1 K. B. 174
- "Directing my course." *THE "TEMPUS"*  
[1913] P. 166
- "Domestic purposes." *METROPOLITAN*  
*BOARD v. AVERY* - [1913] W. N. 370
- "Eldest or only son." *In re WISE'S SETTLE-*  
*MENT. SMITH v. WALLIS*  
[1913] 1 Ch. 41
- "Employment of a casual nature." See  
**WORKMEN'S COMPENSATION—Work-**  
**man.**
- "Grade." *BARNETT v. PORT OF LONDON*  
*AUTHORITY* - - [1913] 2 K. B. 115
- "Heir-at-law." *In re DAVISON'S SETTLE-*  
*MENT. DAVISON (CATTERMOLE) v.*  
*MUNBY* - - - [1913] 2 Ch. 498
- "Impracticable." *GODDEN v. W. COWLIN &*  
*SON* - - - [1913] 1 K. B. 590
- "Improvements." *In re HANBURY'S SETTLED*  
*ESTATES* - - - [1913] 1 Ch. 50
- "Issue." *In re EMBURY. PAGE v. BOWYER*  
109 L. T. 511
- "Issue male in succession." *In re SIMCOE.*  
*VOWLER-SIMCOE v. VOWLER*  
[1913] 1 Ch. 552
- "Land used only as a railway." *TOTTENHAM*  
*U. D. C. v. METROPOLITAN ELECTRIC*  
*TRAMWAYS LD.* - [1913] A. C. 702
- "Lawful eldest male issue." *In re FINLAY'S*  
*ESTATE* - - - [1913] 1 I. R. 143
- "Male heir, my nearest." *In re WATKINS.*  
*MAYBERY v. LIGHTFOOT*  
[1913] 1 Ch. 376
- "Male relative, my nearest and eldest." *In re*  
*WATKINS. MAYBERY v. LIGHTFOOT*  
[1913] 1 Ch. 376
- "Manual labour." See **INSURANCE**  
(NATIONAL).
- "May." *CALICO PRINTERS' ASSOCIATION,*  
*LD. v. BOOTH - C. A.* [1913] 3 K. B. 652  
*REX v. MITCHELL (OLITHEROE JJ.).*  
*Ex parte LIVESLEY* [1913] 1 K. B. 561

**WORDS—continued.**

- "Moderate" speed. *THE "COUNSELLOR"*  
[1913] P. 70
- "Nominal rent." *GOVERNORS OF STEPNEY*  
*AND BOW EDUCATIONAL FOUNDATION*  
*v. INLAND REVENUE COMMRS.*  
[1913] 3 K. B. 570
- "Opposite party." *STUDLEY v. STUDLEY*  
[1913] P. 119
- "Or." *In re ALDERTON. HUGHES v. VAN-*  
*DERSPAR* - - - [1913] W. N. 129
- "Other and others." *STANLEY v. BOND*  
[1913] 1 R. 170
- "Passenger steamer." *WEEKS v. ROSS*  
[1913] 2 K. B. 229
- "Permanent trusts." *ATT.-GEN. v. LONDON*  
*(CITY) CORPORATION*  
[1913] 1 K. B. 201
- "Pits." *LOTHOUSE COLLIERY, LD. v.*  
*OGDEN* - - - 107 L. T. 827
- "Purchase" of reversion. *INLAND REVENUE*  
*COMMRS. v. GRIBBLE*  
[1913] 1 K. B. 220
- "Ready money." *In re RODMELL. SAFFORD*  
*v. SAFFORD* - - - 108 L. T. 184
- "Redeemable." *EDINBURGH CORPORATION*  
*v. BRITISH LINEN BANK*  
H. L. (Sc.) 133
- "Single private drain or sewer." *HOLYWOOD*  
*U. D. C. v. GRAINGER (MARGARET)*  
[1913] 2 I. R. 126
- "Stores." *THE "NICOLAY BELOZWETOW"*  
[1913] P. 1.
- "Subject" of Colony. See **FOREIGN JUDG-**  
**MENT.**
- "Swerve." *THE OLYMPIC AND H.M.S.*  
*HAWKE* - - - [1913] P. 214
- "Two-thirds" limit. See **TRUSTEE.**
- "Workman." See **WORKMEN'S COMPEN-**  
**SATION.**
- "Wreck." *THE "OLYMPIC" (WAGES)*  
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**WORDS (GENERAL).**See **GENERAL WORDS.**

**WORDS (TECHNICAL).**—Will—Legal devise—  
A. and "his issue male in succession"—  
Words of explanation—Intended devolu-  
tion explained—Technical words un-  
explained—Rule of construction.  
See **WILL—Devise—Estate Tail.**

**WORKMAN—Employer and.**See **MASTER AND SERVANT, and WORK-**  
**MEN'S COMPENSATION.****WORKMEN'S COMPENSATION.***Accident arising out of and in the course*  
*of Employment, col. 701.**Accident—Claim, col. 725.**Injury, col. 726.**Notice, col. 730.**Agreement. See below, Compensation.*

**WORKMEN'S COMPENSATION**—*continued.*

*Appeal.* See below, **Compensation**—**Appeal.**

*Arbitration.* See below, **Compensation.**

*Claim.* See above, **Accident—Claim.**

*Compensation—Agreement, col. 734.*

*Arbitration, col. 736.*

*Assessment, col. 739.*

*Payment into Court, col. 743.*

*Redemption, col. 744.*

*Review, col. 745.*

*Contracting-out Scheme, col. 754.*

*Costs, col. 755.*

*Death.* See above, **Accident—Injury.**

*Dependants, col. 757.*

*Disease.* See above, **Accident arising &c., and Industrial Disease.**

*Evidence, col. 760.*

*Incapacity, col. 760.*

*Indemnity, col. 760.*

*Industrial Disease, col. 762.*

*Injury.* See above, **Accident—Injury.**

*Medical Examination.* See above, **Compensation—Review.**

*Medical Referee, col. 763.*

*New Trial, col. 763.*

*Notice of Accident.* See above, **Accident—Notice.**

*Remedies, col. 763.*

*Seaman, col. 765.*

*Shipping, col. 766.*

*Sub-contracting, col. 766.*

*Workman, col. 767.*

**Accident arising out of and in the course of Employment.**

*Anthrax.* See below, *Evidence.*

*Appendicitis.* See below, *Evidence—Full, and Accident—Injury.*

*Assault.* See below, *Risk not Incidental to Employment.*

*Blood Poisoning.* See below, *Evidence.*

*Evidence, col. 702.*

*Heart Disease.* See above, *Evidence.*

*Hernia.* See above, *Evidence.*

*Infectious Diseases.* See above, *Evidence.*

*Peritonitis.* See above, *Evidence.*

*Pleurisy.* See above, *Evidence.*

*Pneumonia.* See above, *Evidence.*

*Risk Incidental to Employment, col. 711.*

*Risk Not Incidental to Employment, col. 716.*

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**—*continued.*

*Anthrax.*

See below, *Evidence.*

*Appendicitis.*

See below, *Evidence—Full, and Accident—Injury.*

*Assault.*

See below, *Risk not Incidental to Employment.*

*Blood Poisoning.*

See below, *Evidence.*

*Evidence.*

*Anthrax, col. 702.*

*Appendicitis, col. 702.*

*Blood Poisoning, col. 702.*

*Chill, col. 703.*

*Disappearance.* See below, *Drowning.*

*Drowning, col. 704.*

*Fracture of Spine, col. 705.*

*Heart Disease, col. 706.*

*Heat Apoplexy, col. 707.*

*Infectious Disease, col. 708.*

*Onus of Proof, col. 708.*

*Peritonitis, col. 708.*

*Prohibited Act, col. 709.*

*Rupture, col. 709.*

*Anthrax.*

*Handling of a number of dead animals—One proved to have died from anthrax—Suspensions in other cases—Some handled in employment, others not—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

SHERWOOD v. JOHNSON - C. A. [1913]

W. C. & Ins. Rep. 57 ; 5 B. W. C. C. 68

*Appendicitis.*

*Chief apparent injury to ankle—Development of appendicitis, peritonitis—Finding by arbitrator that death was result of the accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, and Sched. I., s. (1) (a).*

*Held, that there was evidence upon which the arbitrator's finding could be supported.*

EUMAN v. DALZIEL & CO. - Ct. Sess. [1913]

W. C. & Ins. Rep. 49

*Blood Poisoning.*

*Death as result of injury—Bricklayer—Abrasion—Inference—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

*On leaving his home to go to work, a bricklayer had nothing the matter with his hands,*

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

but on his return there was a small abrasion on the back of his left hand where the thumb joins the hand. Four weeks later he developed an abscess in his left armpit, and died a few days later of septic poisoning. On the day of the injury the bricklayer was engaged in cutting a chase in brickwork with the aid of a hammer and chisel. The wound, which was a common one for bricklayers to sustain, was such as would be caused by the hammer slipping off the head of the chisel and striking his hand. The medical evidence was that the abscess was most likely to be attributable to an abrasion on the arm or hand. There was no evidence that the man had any other abrasion, and the bacillus could not enter the blood except through an abrasion of the skin. The doctor gave it as his opinion that the abrasion was the cause of the septic poisoning:—

*Held*, that the county court judge was justified in inferring that the workman had met with an accident arising "out of and in the course of" his employment, and that his death resulted from the accident. *FLEET v. B. H. JOHNSON & SONS* - C. A. [1913]

W. C. & Ins. Rep. 149; 6 B. W. C. C. 60; 29 T. L. R. 207; 57 S. J. 226

**Death — Collier — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**

*HOWE v. FERNHILL COLLIERIES, LD.*

C. A. 107 L. T. 508; 5 B. W. C. C. 629

**Dust in eye — Abrasion — Inflammation — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**

A workman got some dust in his eye while at work and inflammation subsequently set in, with the result that he was incapacitated. The medical evidence was that the germ which caused the inflammation could only have entered the eye through an abrasion, and that it could not have entered with the dust or have been rubbed into it by the man in clearing his eye. There was no evidence to shew when and how the germ got into the eye:—

*Held*, that, even assuming that the abrasion was caused by the workman in trying to clear his eye, the county court judge was justified in holding that the injury was not due to an accident arising "out of" the employment within s. 1 of the Workmen's Compensation Act, 1906. *BELLAMY v. JAMES HUMPHRIES & SONS, LD.* - C. A. [1913] W. C. & Ins. Rep. 169; 6 B. W. C. C. 53

Chill.

**Chill—Miner contracting chill through standing for one and a half hour in draught from pit shaft while waiting to go up—Miner ordered to leave work and go up in consequence of wreck in another shaft—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

*Held*, that death was not due to injury by accident. *Alloa Coal Co. v. Drylie* [1913] W. C. & Ins. Rep. 213, distinguished. *JOHN WATSON, LD. v. BROWN* - Ct. Sess. [1913] W. C. & Ins. Rep. 223; 6 B. W. C. C. 416

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

*Pleurisy—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A collector and canvasser, who had contracted pleurisy, claimed compensation from his employers, averring that in order to finish his work timeously one day he ~~had~~ to over-exert himself in climbing the stairs of a tenement; that he became "sweated" and contracted a chill which developed into pleurisy; and that he thus sustained an accident in the course of his employment. The arbitrator, without allowing a proof, dismissed the application as irrelevant, holding that the workman had failed to aver an "accident" within the meaning of the Act:—

In an appeal, *held* that the arbitrator was right. *M'MILLAN v. SINGER SEWING MACHINE Co., LD.* - Ct. Sess. 1913 S. C. 346;

[1913] W. C. & Ins. Rep. 70; 6 B. W. C. C. 345

**Pneumonia—Miner contracting chill through standing knee-deep in cold water at pit bottom waiting for cage—Accumulation of water due to stoppage of pump to repair defect—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

*Held* that immersion in water so accumulated was an accident.

**Pumping machinery in wet pit stopped to repair defect—Water accumulating in consequence of stoppage of pump—Miner contracting chill through standing at pit bottom knee-deep in cold water waiting for cage—Miner found to be suffering from pneumonia five days afterwards, and subsequently dying of pneumonia.**

*Held* that the arbitrator was entitled to find that death was due to injury by accident arising out of and in the course of the employment. *ALLOA COAL CO. v. DRYLIE*

Ct. Sess. [1913] W. C. & Ins. Rep. 213; 6 B. W. C. C. 398

See below, Accident—Injury.

**Pump in mine out of order—Pit bottom flooded round cage to maximum depth of eighteen inches—Possibility of comparatively dry access to cage over hatches—Miner voluntarily standing in the water in order to get an early place in the cage—Miner incapacitated for work by deafness caused by chill contracted through exposure—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

*Alloa Coal Co. v. Drylie* [1913] W. C. & Ins. Rep. 213, distinguished. *M'LUCKIE v. JOHN WATSON, LD.*

[1913] W. C. & Ins. Rep. 481

Disappearance.

See below, Drowning.

Drowning.

**Cause of accident unknown — Inference — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.**

A workman was employed as a barge boatman, and his duties were to bring empty

**WORKMEN'S COMPENSATION** (Accident arising out of and in the course of Employment)—*continued.*

barges down a canal and take full barges up. He was last seen walking away, with a boat-hook over his shoulder, from an empty barge which he had just tied up. A few minutes later he was found drowned in the canal about ninety yards away from where he was last seen. A boat-hook was found about twenty yards away from his body, hanging from the stem of a barge which did not belong to his employers:—

*Held*, that the county court judge was justified in holding that he was not entitled to infer that the death of the man was due to an accident arising "out of and in the course of the employment" within s. 1 of the Workmen's Compensation Act, 1906. *BINES v. L. GUERET, LD.* C. A. [1913] W. C. & Ins. Rep. 158; 6 B. W. C. C. 120

*Seaman—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), ss. 1, 7.

*LEE v. STAG LINE, LD.* - C. A. 5 B. W. C. C. 660; 107 L. T. 509; 56 S. J. 720

*BURWASH v. FREDERICK LEYLAND & CO., LD.* - C. A. 5 B. W. C. C. 663; 28 T. L. R. 546; 56 S. J. 703; 107 L. T. 735

*Unexplained death—Seaman found drowned—Inference from proved facts—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

In a claim for compensation by the dependants of a ship steward, who was last seen alive in his bunk, and was found drowned next day in the harbour near to the place where his ship had been lying, the arbitrator awarded compensation.

The Court (diss. Lord Guthrie) recalled the award of the arbitrator, holding that there was no evidence to justify the inference that the accident which caused death arose out of the employment. *LENDRUM v. AYR STEAM SHIP-PIING CO., LD.* - Ct. Sess. 1913 S. C. 331; [1913] W. C. & Ins. Rep. 10; 6 B. W. C. C. 326

*See below, Risk incidental to Employment—Boat, Use of and Risk not incidental to Employment—Employment, Termination of and Return home.*

### Fracture of Spine.

*Strain at work—Death—Res ipsa loquitur—Inference—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.*

A workman was put to do heavy work. An hour and a half later he was found to be suffering from some injury which necessitated ambulance aid and his removal home. He gave no written notice, but informed the works foreman, at the time the ambulance was brought, that he had fallen and hurt himself while working. He returned to work a few nights later but complained of pain. Five and a half months later he had to go to the hospital, where he remained until he died six months after. The death was due to paralysis from the fracture of one of the lumbar vertebræ;

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this, according to the medical evidence, might have happened when he first complained of pain. The county court judge drew the inference that the injury from which death resulted was due to accident arising out of the employment:—

*Held*, there was evidence to support the finding.

*Semble.* The deceased's statements were not admissible to prove the accident. Notice to the works foreman was notice to the employers. *HEWITT v. STANLEY BROTHERS*

C. A. 6 B. W. C. C. 501; [1913] W. C. & Ins. Rep. 495; 109 L. T. 384

### Heart Disease.

*Act done in course of employment—Death from heart failure while working—Condition not such as to cause death without strain—Evidence—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A workman was employed in loading heavy bags on to trucks and then pushing the loaded trucks on to a ry. The work was heavy, and three men were employed on it so that one man might rest, while the other two worked, except when they were pushing a truck, when all three worked. The workman had been working all the morning, and in the afternoon he had just joined with the other two men in pushing a truck, when he fell, and died soon afterwards. The medical evidence was that the man was suffering from fatty degeneration of the heart, but that the disease was not so far advanced that he would have died without being subjected to some strain:—

*Held*, that there was evidence to support the finding of the county court judge that the man died from a strain arising "out of and in the course of" his employment within s. 1 of the Workmen's Compensation Act, 1906.

*Barnabas v. Bersham Colliery Co., 103 L. T. 513, distinguished. DOUGHTON v. ALFRED HICKMAN, LD.* - C. A. [1913] W. C. & Ins. Rep. 143; 6 B. W. C. C. 77

— *Death* — Workman dying while engaged in lifting baskets of corn—Nothing unusual occurring in course of work until workman attacked by illness—Heart failure partly due to strain caused by exertion made by workman in stooping to fill baskets with corn—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.  
*See below, Accident—Injury—Death.*

*Death due to heart failure—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

In an arbitration under the Workmen's Compensation Act, 1906, the arbitrator found that a farm labourer, apparently in good health, died suddenly while engaged, in the course of his ordinary work, in lifting baskets of corn to feed a bruising machine; that the cause of death was "failure of the heart"; and that "a contributing cause of the failure

**WORKMEN'S COMPENSATION** (Accident arising out of and in the course of Employment)  
—continued.

of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping to fill the basket with corn and then lifting it when full up to the level of his shoulders in order to feed the "bruiser":—

*Held*, that there were no facts stated from which the arbitrator could competently infer that the death was due to injury by accident within the meaning of the Workmen's Compensation Act, since there was no particular event or occurrence to which the death could be attributed.

*Clover, Clayton & Co., Ltd. v. Hughes* [1910] A. C. 242, distinguished. *HASTIE OR RITCHIE AND OTHERS v. KERR*

Ct. of Sess. 1913 S. C. 613; [1913] W. C. & Ins. Rep. 297; 6 B. W. C. C. 419

*Death from heart failure eight days after severe strain—No evidence of accident—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

A ship's officer was subjected to severe strain during the loading of his ship, and eight days later he suddenly fell down dead. There was evidence that he had seemed unwell since the loading had been done and that he had always enjoyed good health previously:—

*Held*, that there was no evidence that his death was due to any accident, and that his dependants were not therefore entitled to recover compensation under the Workmen's Compensation Act, 1906. *BLACK v. NEW ZEALAND SHIPPING CO.*

C. A. [1913] W. C. & Ins. Rep. 480; 6 B. W. C. C. 720

**Heat Apoplexy.**

*Apoplectic stroke—Fireman with diseased arteries—Work of a kind likely to cause strain to diseased arteries—Inference of accident—Workmen's Compensation Act, 1906*, s. 1, sub-s. 1.

A fireman, after having been for some time at work shovelling coal and raking fires in the stokehold of a steamship, had an apoplectic stroke. The medical evidence went to prove that the man was in a diseased condition, and that such a stroke would be likely to be brought on by such exertion. The county court judge drew the inference that the injury was caused by accident within the meaning of the Act:—

*Held*, that there was evidence to support the inference. *BROFORST v. OWNERS OF S.S. "BLOMFIELD"*

C. A. 6 B. W. C. C. 613

*Stoker found in a fit in the stokehold—Heat apoplexy—Inference—Workmen's Compensation Act, 1906*, s. 1, sub-s. 1.

A ship's stoker while on duty went into a coal bunker adjoining the stokehold, and was soon afterwards found in a condition of apoplexy. Upon the medical evidence the arbitrator found that it was not proved that the fit had been brought on by the work the man had been doing at the time, and that therefore the apoplexy was not caused by accident arising out of the employment:—

**WORKMEN'S COMPENSATION** (Accident arising out of and in the course of Employment)  
—continued.

*Held*, there was no misdirection. *OLSON v. OWNERS OF S.S. "DORSET"*  
C. A. 6 B. W. C. C. 658

**Infectious Disease.**

*Hospital—Porter—Cleaning Mortuary—"Accident"—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1.

*MARTIN v. MANCHESTER CORPORATION.*

C. A. [1912] W. C. Rep. 289; 5 B. W. C. C. 529; 10 L. G. R. 996; 106 L. T. 741;  
• [1912] W. N. 105; 76 J. P. 259

**Onus of Proof.**

*Death—Engine driver—Leaving engine—Rules of company—Reason for leaving unknown—Burden of proof—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

An engine driver, who by the rules of the ry. co. was forbidden while on duty to leave his engine unless it was absolutely necessary to do so, left his engine while standing in a siding and was killed by another engine passing. The arbitrator found that he left his engine for some unknown reason which might or might not be consistent with his employment, and awarded compensation in favour of the workman's dependant:—

*Held*, that upon the arbitrator's finding the applicant had not discharged the burden of shewing that the accident arose "out of and in the course of" the deceased man's employment, and she was therefore not entitled to compensation. *DYHOUSE v. GREAT WESTERN RY.*

C. A. [1913] W. C. & Ins. Rep. 491; 6 B. W. C. C. 691; 109 L. T. 193

*Death from injury—Scope of employment—Onus of proof—Evidence amounting to surmise—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A boy employed to stop and start a motor engine from a switchboard at one end of a motor house was found dead in the cogwheels of the motor engine eighteen feet away from his proper station, but no one saw the accident happen. In proceedings by the father of the boy to recover compensation under the Workmen's Compensation Act, 1906:—

*Held*, that the evidence as to how the accident happened only amounted to "surmise," and that the onus of proving that it arose "out of" the employment within s. 1, sub-s. 1, of the Act of 1906, had not been discharged by the applicant. *SMITH v. STANTON IRONWORKS CO. COLLIERIES, LD.*

[1913] W. C. & Ins. Rep. 186; 6 B. W. C. C. 239

**Peritonitis.**

See above, *Evidence—Appendicitis*, and below, *Accident—Injury.*

*Injury—Onus of proof—Blow on stomach—Subsequent death from perforation of bowel—Appendicitis—Death not result of accident—Review of county court judge's finding—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

A coalheaver met with an accident in the course of his employment, by coal striking his stomach. He suffered pain and left his work. Four days afterwards an operation was performed, and it was found he was suffering from perforation of the bowel and also from appendicitis of some standing. He died three days later. At the post-mortem a second perforation was discovered which was not in existence at the time of the operation, and it was found that death had resulted from peritonitis caused by the second perforation. There was a conflict of medical evidence as to whether the second perforation was caused by a blow or by the appendicitis. There was no sign of a bruise externally or internally. The county court judge, who sat with a medical assessor, found that the death was the result of injury caused by the accident:—

*Held* (Kennedy L.J. dissenting), that there was no evidence to connect the death with the accident, and that the dependants were not therefore entitled to compensation under the Workmen's Compensation Act, 1906, s. 1, sub-s. 1. *WOODS v. THOMAS WILSON, SONS & CO.*

[1913] W. C. & Ins. Rep. 569; 6 B. W. C. C. 750; 29 T. L. R. 726

**Prohibited Act.**

*See below, Risk incidental to Employment—Prohibited Act and Risk not incidental to Employment—Prohibited Act.*

**Rupture.**

*Absence of proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A fireman met with an accident to his knee while working on board his ship. About ten days later he was found to be suffering from a rupture in the groin which had ultimately to be operated on. The medical evidence was that the rupture was an old one and must have been in existence before the date of the accident:—

*HELD*, that there was evidence to support the county court judge's award in favour of the steamship co., and that the workman was not entitled to recover compensation. *CLARKSON v. CHARENCE STEAMSHIP CO.*

C. A. [1913] W. C. & Ins. Rep. 422; 6 B. W. C. C. 540

*Inference—Accident not arising out of and in the course of employment—Medical assessor—Advice received need not be stated—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A workman had to go in the course of his employment from a powder magazine to his employer's office 200 yards away down a steep path. At the magazine his clothes were clean and he was apparently in good health, but he arrived at the office covered with mud and in great pain. He was seen that afternoon by a doctor, who found him to be suffering from shock and complaining of pain in the abdomen. At that time the

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

doctor examined the seat of an old rupture and found nothing wrong with it. That night the workman was sick two or three times, and next day the doctor found him to be suffering from strangulated hernia, and he died after having been operated on in hospital. Both the hospital doctor and the doctor who attended the man said the vomiting might have caused the hernia to protrude so as to cause strangulation. In an application by the widow for compensation:—

*Held*, that the county court judge was justified in holding that it had not been proved that the injury which resulted in the death of the workman was caused by an accident arising out of and in the course of the employment.

While it may be desirable for a county court judge to communicate to the parties advice given him by a medical assessor, he is not obliged to do so. *MARSHALL v. SHEPPARD*

C. A. [1913] W. C. & Ins. Rep. 477; 6 B. W. C. C. 571

*Rupture while lifting heavy weight—Place weak from old rupture subsequently healed—Gradual weakening—No unusual strain—Judge finds "accident" but not "out of"—Misdirection—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.*

A brewer's assistant was lifting a heavy cask standing on a shelf five feet from the ground, when he felt a severe internal strain and became faint and sick. He afterwards found that he had ruptured himself. Twenty-two years before he had had a rupture in the same place, for which he wore a truss for many years, but during the last five or six years he had left it off, as he found he could do his work without it. The county court judge held that, although there was injury by accident, it did not arise out of the employment, as it was the result of a gradual weakening, and not of any unusual strain:—

*Held*, there was misdirection. "Accident" having been found, the evidence proved that it arose out of the employment. *BROWN v. KEMP*

C. A. 6 B. W. C. C. 725

*Strangulation of hernia—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A stoker suffering from rupture, and wearing a truss, suffered a strangulation of the hernia, while engaged in performing his duties of stoking, duties which involved great abdominal strain. He subsequently died from the effects of the strangulation:—

*Held*, that death was due to an accident arising "out of and in the course of" the employment. *SCALES v. WEST NORFOLK FARMERS' MANURE AND CHEMICAL CO.*

C. A. [1913] W. C. & Ins. Rep. 165; 6 B. W. C. C. 188

*See Accident—Injury.*

*Heart Disease.*

*See above, Accident—Evidence.*



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*Hernia.*

See above, **Accident—Evidence.**

*Infectious Diseases.*

See above, **Accident—Evidence.**

*Peritonitis.*

See above, **Evidence.**

*Pleurisy.*

See above, **Accident—Evidence.**

*Pneumonia.*

See above, **Accident—Evidence.**

*Risk incidental to Employment.*

*Assault, col. 711.*

*Boat, Use of. See below, Going to or from Work.*

*Domestic Servant, col. 711.*

*Employment, Break in, col. 712.*

*Enlargement of Scope of Employment. See below, Prohibited Act.*

*Exposure to Risk, col. 712.*

*Fire, Injury by, col. 712.*

*Going to or from Work, col. 713.*

*Prohibited Act, col. 714.*

*Recklessness, col. 715.*

*Serious and Wilful Misconduct. See above, Prohibited Act.*

*Strain. See above, Evidence.*

*Unloading Ship, col. 716.*

**Assault.**

*School teacher killed by pupils—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

An assistant schoolmaster in an industrial school having, owing to his efforts to maintain discipline, incurred the enmity of some of the boys, was assaulted by them in pursuance of a pre-arranged plan, with the result that he died the same day from the effect of the injuries so inflicted. On an application by his mother for compensation:—

*Held*, that the occurrence was an "accident," and that it arose "out of" the employment, an attack by the pupils on the teacher was a risk incidental to the employment. *KELLY v. TRIM JOINT DISTRICT SCHOOL (BOARD OF MANAGEMENT)* - C. C. (Ir.) [1913] W. C. & Ins. Rep. 401

*Boat, Use of.*

See below, *Going to or from Work.*

*Domestic Servant.*

*Sleeping apartment—Dangerous state of roof*

**WORKMEN'S COMPENSATION** (Accident arising out of and in the course of Employment)—*continued.*

—*Accident arising "out of and in the course of" the employment—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.*

A domestic servant, employed in a private hotel, was called by her mistress at six o'clock in the morning to light the fire in the kitchen range. While in the act of getting up to do so, some mortar from the rendering attached to the slates fell into her right eye, in consequence of which she lost the sight of that eye. Handfuls of mortar had often before fallen from the slates above the servant's sleeping room to the knowledge of her employer:—

*Held*, that the accident arose out of and in the course of the employment. *ALDRIDGE v. MERRY* - C. A. [1913] 2 I. R. 308; [1913] W. C. & Ins. Rep. 97; 6 B. W. C. C. 451

**Employment, Break in.**

*Railway guard—Off duty, but bound to remain at railway station—Rests on buffer stop—Subsequently found injured, lying between rails—Inference of fact—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A ry. servant acted as guard on a train between station A and junction B; he arrived at the junction at 11.8 A.M., and was there relieved of duty until 7.30 P.M., when he was to travel back with the train on its return journey, but according to the instructions issued to him for the day's work he was to remain at the junction for the return train. Within this interval he sat on a buffer stop to rest himself, and was next seen lying on the ground between the rails with a wound on his head and other injuries, from the effect of which he died on the following day. His widow and children applied for compensation:—

*Held* (Cherry L.J. dissenting), that the deceased met his death by an accident arising out of and in the course of his employment. *SHEEHY v. GREAT SOUTHERN AND WESTERN Ry.* - C. A. (Ir.) [1913] W. C. & Ins. Rep. 404

**Enlargement of Scope of Employment.**

See below, *Prohibited Act.*

**Exposure to Risk.**

*Workman stooping over a machine on which he was employed in an open yard during a gale—Workman injured by flying slate—Workman unable to see and avoid slate owing to his stooping position—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

*Held*, that there was evidence on which the sheriff-substitute could competently find that the accident arose out of the employment. *ADAMSON v. GEORGE ANDERSON & Co. (1905) LD.* - Ct. Sess. [1913] W. C. & Ins. Rep. 506

**Fire, Injury by.**

*Ship's carpenter burned by shavings accidentally set on fire by shore labourer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

A ship's carpenter, working on the poop of a vessel lying in harbour, was severely burned owing to some shavings by which he was surrounded being ignited by a match carelessly thrown down by a shore labourer. The carpenter's trousers happened to be saturated with inflammable oil which had leaked from a barrel he had shifted in the course of his work, and thus readily caught fire from the shavings:—

*Held*, that he was injured by an accident arising out of and in the course of his employment. *MANSON v. FORTH AND CLYDE STEAMSHIP CO., LD.* - Ct. Sess. 1913 S. C. 921; [1913] W. C. & Ins. Rep. 399

**Going to or from Work.**

*Use of boat within contract of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

Where it was within the terms of a workman's contract of service that he should use his employer's boat to cross a river in going to and from his work, and he was drowned one day while returning across the river, the Court held that his death was due to an accident arising "out of and in the course of" his employment.

*Cremens v. Guest, Keen and Nettlefolds, Ltd.* [1908] 1 K. B. 469; 77 L. J. (K.B.) 326, followed. *MOLE v. WADSWORTH - C. A.* [1913] W. C. & Ins. Rep. 160; 6 B. W. C. C. 128

*Workman returning home—Attempt to board collier's train while still in motion—Right to use train free of charge—Contract of service—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A miner was allowed to travel to and from his work free of charge on a colliers' train which was provided by a ry. co. by arrangement with his employers. Before being allowed to use the train the miner entered into an agreement with the employers with regard to it in which he undertook to "desist from exercising the privilege" whenever required to do so by the employers. On Oct. 1, 1912, he attempted to enter the train to return home while it was still in motion, with the result that he was run over and killed. The county court judge held that it was a term of the deceased's contract of service that he should have the right to travel in this train to and from his work and that his conduct at the time of the accident was not such as to take him outside the sphere of his employment, and therefore that the accident arose out of and in the course of his employment:—

*Held* (by the C. A.), that the county court judge was justified in so holding.

*Cremens v. Guest, Keen & Nettlefolds, Ltd.* [1908] 1 K. B. 469, and *Watkins v. Guest, Keen & Nettlefolds, Ltd.* [1912] W. C. Rep. 150, followed. *WALTON v. TREDEGAR IRON AND COAL CO.* - C. A. [1913] W. C. & Ins. Rep. 457; 6 B. W. C. C. 592

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

**Prohibited Act.**

*Breach of regulations—Direction from superior—Careless act of fellow workman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

The applicant was a girl employed in working a press for stamping tin. The machine became blocked, and she went to an engineer employed in the works to get him to set it right. He said, "I cannot come yet; you must see to it yourself." She then put her hand into the machine to get the piece of tin out, and another girl coming along put her foot on the pedal of the machine and set it going, whereby the applicant's hand was injured. The applicant was not allowed to deal with the machine, if it got blocked, but it was the engineer's duty to set it right:—

*Held*, that, there being some evidence that the engineer had authority to enlarge the scope of the applicant's employment by telling her to see to the machine, the arbitrator's finding that the accident arose "out of" her employment and his award of compensation under the Workmen's Compensation Act, 1906, s. 1, in her favour should not be reversed.

*Held*, also, that although the act of the other girl in setting the machine going was unauthorized, it could not be said that the arbitrator was wrong in disregarding this, as negligence of a fellow workman is not a defence to a claim for compensation under the Act of 1906. *GEARY v. GINZLER & CO.*

*C. A.* [1913] W. C. & Ins. Rep. 314; 6 B. W. C. C. 72; 108 L. T. 286

*"Serious and wilful misconduct"—Injury—Employment as bottler—Non-wearing of protecting gauntlet—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c).*

A girl of fourteen employed as a bottler was slightly injured, by the bursting of a bottle, on her right wrist. According to special rules for the trade she was bound to wear full-length gauntlets, provided by the employer, on both her arms. At the time of the accident she had no gauntlet on her right arm. The evidence shewed that the forewoman—whose duty it was to superintend the workers and report any misconduct to her employer but was not very strict in enforcing the rule—used to tell the girl to wear gauntlets, but that the girl pleased herself. There was also evidence that the employer, so far as he was concerned, used to insist upon gauntlets being worn. The county court judge held that the defence of the employer that the injury was attributable to the "serious and wilful misconduct" of the girl should not be allowed to prevail:—

*Held*, that there was evidence to support the decision of the county court judge. *CASEY v. HUMPHRIES* - C. A. [1913]

W. C. & Ins. Rep. 485; 6 B. W. C. C. 520; [1913] W. N. 221; 29 T. L. R. 647; 57 S. J. 716

*"Winking at" non-observance of rule—Knowledge of officer in charge—Tacit permission—*

# WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment) — continued.

*Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A miner lost his life by an accident occurring while he was leaving his work in an empty tub generally used in the mine for conveying coal. The colliery rules forbade men from riding in tubs except with the permission of the manager or underlooker. Subject to the control of the manager and underlooker the fireman was responsible for the safe working of the mine and seeing that the rules were carried out, and it was his duty to report any contravention of the rules to the superior officials. The manager and underlooker had given no permission to men to ride in the tubs, but there was evidence that the tubs had been so used by men on the night shift for a considerable length of time, and that the practice had never been stopped or forbidden by the firemen in charge of the mine. The manager and underlooker were seldom, if ever, in the mine at night. The fireman in charge of the mine at the time of the accident said the practice had gone on since his appointment as fireman without objection by him, and he thought permission might have been given by a previous fireman:—

*Held*, that there being no evidence that the miner knew the practice of riding in the tubs was wrong, he was entitled to assume under the circumstances that it was "winked at" by, or done with the acquiescence of, the officials in charge, and he could not be expected to inquire into the fireman's authority to give permission; and that his widow was therefore entitled to compensation for his death.

*Barnes v. Nunnery Colliery Co. [1912] A. C. 44, distinguished. RICHARDSON v. DENTON COLLIERY CO. - C. A. [1913] W. C. & Ins. Rep. 554; 6 B. W. C. C. 629; 109 L. T. 370; [1913] W. N. 238*

## Recklessness.

*Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A workman was employed in unloading baskets of fish from a trawler by sliding them down some planks extending from the side of the ship to a pontoon. In order to keep the planks at a convenient slope the ends of the pontoon were supported by boxes which were varied in number according to the state of the tide. The man was standing on the planks, when it became necessary to decrease the number of boxes under them; but, instead of going off the planks at either end, he caught hold of the stem of another trawler some three or four feet away and swung himself from that. While doing so he slipped and fell with fatal results:—

*Held*, that the accident arose "out of and in the course of" the man's employment, for at the worst he had only done in a reckless manner something he was employed to do, and the accident was due to a risk incidental to

# WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment) — continued.

the employment. *GALLAGHER v. SHIP "FABRI" (OWNERS) - C. A. [1913] W. C. & Ins. Rep. 116; 6 B. W. C. C. 9; 12 Asp. Mar. Law Cas. 284; 108 L. T. 50; 29 T. L. R. 158; 57 S. J. 225*

## Serious and Wilful Misconduct.

*See above, Prohibited Act.*

## Strain.

*See above, Evidence.*

## Unloading Ship.

*See above, Recklessness.*

## Risk not incidental to Employment.

*Assault, col. 716.*

*Bicycle, Use of, col. 716.*

*Deviation, col. 717.*

*Employment, Break in, col. 718.*

*Employment, Removal from, col. 718.*

*Employment, Termination of, col. 718.*

*Exposure to Risk, col. 720.*

*Going to or from Work. See Employment, Break in, Removal from, Termination of.*

*Prohibited or Unauthorized Act, col. 720.*

*Return Home or to Work, col. 725.*

*Serious and Wilful Misconduct. See above, Prohibited Act, and Risk incidental to Employment.*

## Assault.

*Protection of employer's property—Accident arising "out of" the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

In a claim for compensation by the dependants of a deceased workman under the Workmen's Compensation Act, 1906, it appeared that the deceased was a carter in charge of a horse and van belonging to his employers. A drunken man having stopped near the horse's head, the deceased, who was standing near the horse, warned him to come away, lest the horse should hurt him; whereupon he struck the deceased two blows of the head, causing injuries from which death resulted:—

*Held*, that the risk of assault was not incidental to and the accident did not arise out of the deceased's employment, and compensation was not payable.

*Craske v. Wigan [1909] 2 K. B. 635, explained. MITCHINSON v. DAY BROS. - C. A. [1913] 1 K. B. 603; 82 L. J. (K.B.) 421; [1913] W. C. & Ins. Rep. 324; 6 B. W. C. C. 190; 108 L. T. 193; [1913] W. N. 36; 29 T. L. R. 267; 57 S. J. 300*

## Bicycle, Use of.

*Bicycle provided by employer—Course of the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

In a claim under the Workmen's Compensation Act, 1906, by the dependants of a

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

deceased workman, it appeared that he was employed as an engine driver and was paid by the hour, his work consisting in going round from farm to farm with an engine and threshing machine belonging to his employers, to do the threshing, to look after the interests of his employers, and solicit orders from farmers. For these purposes he was supplied by his employers with a bicycle to use in travelling between his work and his home and between the farms in his district. He also had to make up a daily sheet giving the name of the farmer using the machine, and the number of hours worked, lost time, moves, and flagmen. He was not bound to use the bicycle, but the evidence shewed that the use of a bicycle was part of the arrangement and a term of the contract of engagement. On Sept. 25, 1912, his work having ended at 6 P.M., he proceeded to go home on his bicycle. On the way home he came into collision with a motor lorry and sustained injuries from which he died the next day :—

*Held*, that the employment ended at 6 o'clock and it was not part of his duty to ride home on the bicycle, therefore the accident did not arise in the course of the employment.

*Cremins v. Guest, Keen & Nettlefolds, Ltd.* [1908] 1 K. B. 469, and *Mole v. Wadworth* [1913] W. C. & Ins. Rep. 160; 6 B. W. C. C. 128, distinguished. *EDWARDS v. WINGHAM AGRICULTURAL IMPLEMENT CO., LD.*

C. A. [1913] 3 K. B. 596; 82 L. J. (K. B.) 998; 6 B. W. C. C. 511; 109 L. T. 50; [1913] W. C. N. 221; 57 S. J. 701

*Use of bicycle not acquiesced in by employer—Evidence—Workmen's Compensation Act, 1906* (6 *Eduw.* 7, c. 58), s. 1, sub-s. 1.

An assistant superintendent to an industrial co. used his bicycle to go his rounds. On Mar. 22, 1912, he left his local office at Edmonton at 10 A.M. with thirty-three calls to make, and at 3.40 P.M. he called at his house to get his bicycle lamp, having only made five calls, all in the neighbourhood of his home. He was due at his office at 4 P.M., and while riding down hill, at 3.45 P.M. he fell from his bicycle and was killed. There was evidence that his use of a bicycle was not necessary or known to the co. and that they would have forbidden it, had they known :—

*Held*, that the county court judge was justified in finding that the use of a bicycle by the man was not known to or acquiesced in by the co., and that there was no proof that the accident happened in the course of his employment.

*Pierce v. Provident Clothing and Supply Co.* [1911] 1 K. B. 997, distinguished. *BUTT v. PROVIDENT CLOTHING AND SUPPLY CO.*

C. A. [1913] W. C. & Ins. Rep. 119; 6 B. W. C. C. 18

**Deviation.**

*Carter—Unauthorized deviation from direct route—Workmen's Compensation Act, 1906* (6 *Eduw.* 7, c. 58), s. 1, sub-s. 1.

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

A carter drove his cart out of his direct route by a longer way, stopping at a public house en route. On mounting his cart again the horse ran away, the carter fell and, holding on to the reins, the cart went over him and killed him :—

*Held*, that the accident did not arise "out of and in the course of the employment."  
*EVERITT v. EASTAFF & CO.*

C. A. [1913] W. C. & Ins. Rep. 164; 6 B. W. C. C. 185

**Employment, Break in.**

*Ambit of employment—Workmen's Compensation Act, 1906* (6 *Eduw.* 7, c. 58), s. 1.

A miner who was working down a mine alone in a stall cutting coal left the stall some two hours before the end of his shift and went to another stall where two men were working. He had no watch of his own, and, after looking at a watch belonging to one of these two men, he started to return to his own stall. Having re-entered his stall he was making his way to the face of the coal where he was working, but when he was about seventeen yards away from it, there was a fall of the roof and he was killed. There was no evidence to shew why the man had gone to ascertain the time :—

*Held*, that the county court judge was justified in holding that the workman had departed from the ambit of his employment, and had not returned to it when the accident happened, and that the accident did not therefore arise "in the course of" the man's employment. *WARREN v. HEDLEY'S COLLIERIES CO.* - C. A. [1913] W. C. & Ins. Rep. 172; 6 B. W. C. C. 136

**Employment, Removal from.**

*Mate of ship—Ordered off duty for drunkenness—Taken out of employment—Death from injury—Workmen's Compensation Act, 1906* (6 *Eduw.* 7, c. 58), s. 1, sub-s. 1.

A mate of a ship was ordered by his captain to go to his room for being drunk, but instead of going to his room he went in another direction, fell down a hatchway, and died from the effects of the fall :—

*Held*, that the deceased was taken out of his employment by the order of the captain and that the accident did not arise "out of" the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906. *HOSFALL v. STEAMSHIP "JURA" (OWNERS)*

C. A. [1913] W. C. & Ins. Rep. 183; 6 B. W. C. C. 213

**Employment, Termination of.**

*Death from drowning—Leaving work—Passage from ship to shore—Completion of passage—Workmen's Compensation Act, 1906* (6 *Eduw.* 7, c. 58), s. 1, sub-s. 1.

A ship was berthed alongside a floating wooden stage called a dolphin, connected by a permanent bridge with a quay in Millwall Docks. The dolphin belonged to the Port

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

**Authority.** A trimmer, having completed his engagement on board the ship, went down a ladder from the ship and got safely on to the dolphin. He fell into the water off the dolphin on the side of it away from the ship and was drowned:—

**Held,** that the deceased's employment ceased, when he got on to the dolphin, and that the accident did not arise out of and in the course of his employment. *COOK v. SHIP "MONTREAL" (OWNERS)*

C. A. [1913] W. C. & Ins. Rep. 206; 6 B. W. C. C. 220; 108 L. T. 164; 29 T. L. R. 233; 57 S. J. 282

**Dangerous route—Returning to employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

A boiler scaler returning to the vessel on which he was employed returned by the shortest way, which passed along a quay near the bows of the vessel, which were being repaired by contractors. This passage was fenced off with guard ropes and a danger notice was exhibited. The man nevertheless entered the dangerous area and remained there a few minutes watching the repairing. A rope making fast the bows of the ship to the quay broke and killed him. There was a safe but longer way of approach:—

**Held,** that the deceased was accepting an unnecessary risk and one not incidental to his employment, and that the accident did not therefore arise "out of" the employment. *MURRAY v. ALLAN BROS. & Co. (U. K.), Ltd.*  
C. A. [1913] W. C. & Ins. Rep. 193; 6 B. W. C. C. 215

**Soil of path rested in employer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

A workman met with an accident while walking home from his work in a quarry. The accident happened before he had left the property of his employer, when he was going down a steep rough path, but there was a public right of way along the path:—

**Held,** that the accident was not due to a risk incidental to the employment, and did not therefore arise out of and in the course of the employment. *WILLIAMS v. SIR C. G. A. SMITH*  
C. A. [1913] W. C. & Ins. Rep. 146; 108 L. T. 200; 6 B. W. C. C. 101

A workman, employed underground in a coal mine, on finishing his day's work returned to the surface and was proceeding home by a track along the side of a private branch railway line, the property of his employers, when he was knocked down and killed by an engine at a point 400 yards distant from the mouth of the pit:—

**Held,** that the accident did not arise out of and in the course of his employment. *Caton v. Summerlee and Mossend Iron and Coal Co., Ltd.* (1902) 4 F. 989, followed.  
*GRAHAM (MARY) v. BARE AND THORNTON*  
Ct. Sess. 1913 S. C. 538; [1913] W. C. & Ins. Rep. 202; 6 B. W. C. C. 412

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)**  
—continued.

**Sphere of employment—Passage from ship to shore—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

A seaman going home from his ship, which was moored against the quay of a harbour, crossed a plank which was laid between the ship and a ladder fixed to the side of the quay and belonging to the harbour authority. He crossed the plank safely and ascended a few steps of the ladder, whence he fell into the harbour and injured himself:—

**Held,** that the accident did not arise "out of and in the course of employment." *WEBBER v. WANSBROUGH PAPER CO.*  
C. A. 82 L. J. (K. B.) 1058; 6 B. W. C. C. 583; 109 L. T. 129; [1913] W. N. 236; 29 T. L. R. 704

**Exposure to Risk.**

**Carter in charge of horse and lorry injured while within employer's yard by a sheet of corrugated iron blown off the roof of an adjoining building—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

**Held,** that the accident did not arise out of the employment.

*Adamson v. George Anderson & Co. (1905), Ltd.* [1913] W. C. & Ins. Rep. 506, distinguished. *KINGHORN v. GUTHRIE*

Ct. Sess. [1913] W. C. & Ins. Rep. 509

**Going to or from Work.**

*See Employment, Break in, Removal from, Termination of.*

**Prohibited or Unauthorized Act.**

**Larking—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

A turner while larking with another turner was knocked into a lathe, thereby injuring himself:—

**Held,** that the accident did not arise "out of and in the course of the employment." *WRIGLEY v. NASMYTH, WILSON & Co.*

C. A. [1913] W. C. & Ins. Rep. 145; 6 B. W. C. C. 90

**Lift man—Oiling tackle of lift contrary to orders—Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.**

A lift man whose employment did not include oiling the hoist and tackle of the lift, and who had been expressly instructed not to do such work, was killed while oiling the tackle:—

**Held,** that there was no evidence that the accident arose "in the course of" his employment. *DOUGAL v. WESTBROOK*

[1913] W. & C. Ins. Rep. 522

An assistant porter whose duties were to act under the directions of the head porter of a hospital, was ordered to clean certain lights and windows on the top floor. He went up in the lift, and noticing some dust on the top edge of the lift, as it was going up, he placed his steps against the lift, and got up to remove it. His head was thereby placed outside the

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

top of the lift and was crushed against a beam when it reached the top of the building. There was no evidence that he had any orders to dust the lift:—

*Held*, that, as the risk he undertook by placing his head outside the lift was not within the scope of his employment, the injury was not caused by an accident arising "out of" his employment. **WHITEMAN v. CLIFDEN (Viscount) AND OTHERS** - C. A. [1913] W. C. &

Ins. Rep. 126; 6 B. W. C. C. 49

*See above, Employment, Termination.*

*Message clerk injured while boarding a tramway car in motion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A boy, employed as a message clerk, was sent on an errand and given money to pay for his tramway fare. While attempting unnecessarily to board a tramway car in motion—which as he knew, was forbidden—he fell and was injured.

*Held*, that the accident did not arise out of the boy's employment. **SYMON v. WEMYSS COAL Co., LD.** - Ct. Sess. 1912 S. C. 1239; 6 B. W. C. C. 298

*Messenger boy crossing railway lines without permission—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A messenger boy employed by a ry. co. crossed the lines without permission, in contravention of the rules of the co., for his own purposes, and was run over and killed. In proceedings by his father claiming compensation:—

*Held*, that the accident did not arise "out of" the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906. **MCGRATH v. LONDON AND NORTH-WESTERN RY.**

C. A. [1913] W. C. & Ins. Rep. 198; 6 B. W. C. C. 251

*Miner—Act done in violation of terms of employment—Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

Whilst leaving the mine at the end of his shift a miner was overtaken by two other men who were also making their way along the haulage road towards the pit bottom. They announced their intention of waiting for the next tub and riding on it, but the other man walked on briskly, saying he would wait for them at pit bottom. Riding on tubs was strictly forbidden. The tubs were attached at distances of some twenty-four yards apart to the endless rope by which they were drawn at a speed of about three miles an hour.

After the two workmen had ridden on a tub for two or three minutes, they heard the other man calling out, and running forward they found him lying across the road with his feet on the rails of the haulage line. There was a tub about eleven yards in front of him and he had a mark across his forehead as though he had hit his head against the roof, which at this point was some 3½ feet high. He was suffering from a fractured spine, and died soon afterwards. The medical evidence was

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

that the mark on the forehead was not as high as might have been expected, if the man had struck his head while walking along, although the injury to the spine might have happened by his striking his head in that way:—

*Held*, that there was evidence to support the inference of the county court judge that the accident happened through the man riding on a tub, and therefore that the accident did not arise "out of" the deceased's employment. **BATES v. MIFFIELD COAL Co.**

C. A. [1913] W. C. & Ins. Rep. 180; 6 B. W. C. C. 165

*Miner—Explosives in Coal Mines Order, Feb. 21, 1910—Shot-firer appointed to discharge shots in mine by electrical apparatus; and to connect apparatus with charge by cable—Miner connecting cable with charge at request of shot-firer contrary to explosives in Coal Mines Order—Shot-firer firing shot before miner had reached place of safety—Miner seriously and permanently injured by explosion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

*Held*, that accident did not arise out of and in the course of the employment. **SMITH v. FIFE COAL Co.**

Ct. Sess. [1913] W. C. & Ins. Rep. 343; 6 B. W. C. C. 435

*Mines—Working in dangerous place contrary to order—No note of evidence—Judge's recollection—Duty of judge to take note—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A miner went into a stall to get coal after the timber supporting the roof had been withdrawn, and was killed by a fall of the roof. In an application by the miner's widow for compensation, the county court judge found that the accident had not arisen out of the man's employment, but had happened in a place where the man had no business to be. There were no notes of the evidence, but some five months after the hearing the county court judge stated as his recollection that there was no evidence to support the suggestion that it was a common practice which was winked at by the employers for a miner to work in a stall after the roof prop had been removed; and that there was clear evidence that the deceased had been ordered on the day preceding the accident to clear out of the stall, when the prop was removed, and not go back to it:—

*Held*, that it was impossible to go behind the county court judge's recollection, and that the appeal must be dismissed.

It is the bounden duty of a county court judge to take a note of the evidence. **TOMLINSON v. GARRATTS, LD.**

C. A. [1913] W. C. & Ins. Rep. 416; 6 B. W. C. C. 490

*Repairer employed in mine—Removal of timber for repairs from one level of mine to another—Taking a forbidden route—Utilizing haulage machinery with which workman*

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

*Has no skill—Workman killed by haulage machinery—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

*Held, that workman did not meet with accident "arising out of" his employment.*

*Kerr v. William Baird & Co., (1911 S. C. 701), followed. BURNS v. SUMMERLEE IRON CO. Ct. Sess. [1913] W. C. & Ins. Rep. 45; 6 B. W. C. C. 320*

*Sailor returning to ship at night—Fall while descending steps—Rule against men sleeping on board in port—Injury causing death—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

A man, who was employed as cook on a steam trawler, went on shore one day, while the ship was in port. On his return late at night the tide was out and the ship moored about twenty feet below the quay. While descending an iron ladder to get on board, the man slipped and fell on the deck of the ship and was killed. The employers gave evidence that the crew of the ship were not allowed to sleep on board, while the ship was at the port, and that they had fitted up a house on shore for the use at a small charge of the crews of their ships:—

*Held, that the county court judge was justified in holding that the accident did not happen in the course of the man's employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906. GRIGGS v. STEAM TRAWLER "GAMBROCK" (OWNERS)*

*C. A. [1913] W. C. & Ins. Rep. 122; 6 B. W. C. C. 14*

*Scope of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A boy, employed to coil down separately into a box three warps which came out through the rollers of a machine, left his box and went to free one of the warps which had stuck between the rollers, and got his hand injured by the rollers. It was no part of his duty to attend to the machine itself:—

*Held, that the accident did not arise "out of" the employment as the boy was injured whilst doing something altogether outside his employment, and that he was not therefore entitled to compensation. MCCABE v. HENRY NORTH & SONS, LD. - C. A. [1913] W. C. & Ins. Rep. 522; 6 B. W. C. C. 504; 109 L. T. 369*

*"Serious and wilful misconduct"—Breach of Statutory Rule under Coal Mines Regulation Act—Blasting operation—Rule forbidding return to working place for half an hour "if a shot has been lighted and does not explode"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 2 (c).*

*Held, the statutory rule covered every case in which a light was applied, though ineffectually, to a fuse, and that a man who had returned within thirty minutes to a fuse to which a light had been applied and which had not exploded was guilty of serious and wilful misconduct. WADDELL v. COLTNESS IRON CO. - Ct. Sess. [1913] W. C. & Ins. Rep. 42; 6 B. W. C. C. 306*

**WORKMEN'S COMPENSATION (Accident arising out of and in the course of Employment)—continued.**

*Swimming river—Workman employed on two farms separated by river—Bout kept for purpose of crossing—Accident "arising out of" employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 10.*

A workman was employed by a farmer occupying two holdings separated by a river. A boat was kept for the purpose of enabling the farm hands to cross from one farm to the other. One evening, the boat not being available, the workman, acting in the course of his employment, apparently attempted, contrary to the advice of a fellow workman, to cross the river by swimming, and was subsequently found drowned:—

*Held, that the deceased, having crossed the river by swimming, had exposed himself to a new and added peril not incidental to the employment or contemplated by the parties, and that therefore the accident did not arise out of the employment. GUILFOYLE v. FRANKNESSY - C. A. (Ir.) [1913] W. C. & Ins. Rep. 228; 6 B. W. C. C. 453*

*Work outside scope of employment—Soap stamper helping to clear compressing machine—Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A boy employed as a soap stamper went to help to clear a soap compressing machine, in doing which his left hand was caught by the machine and had to be amputated. The county court judge found that the accident did not arise "out of" the employment.

*Held, that as there was evidence that the boy had gone outside the sphere of his employment to an obviously dangerous place, the C. A. could not interfere with the finding of the county court judge. DAVIES v. CROWN PERFUMERY CO. - [1913] W. C. & Ins. Rep. 484; 6 B. W. C. C. 649*

*Workman employed as beamer on mangle in cloth manufactory—Mangle protected by rails—No part of beamer's duty to be inside rails while machinery was in motion—Machinery stopped for two fixed hours per week in beamer's shift for cleaning—Part of beamer's duty to assist in cleaning at those times, but at no other time—Beamer injured in attempting to clean mangle in motion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

*Held, that the accident did not arise out of and in the course of the employment. M'DIARMID v. OGILVY BROTHERS*

*Ct. Sess. [1913] W. C. & Ins. Rep. 537*

*Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

*Appeal from an order of the C. A. [1913] W. C. & Ins. Rep. 209, reversing an award of the county court judge of Denbighshire, made under the Workmen's Compensation Act.*

The appellant was a foreman worker in the employment of the respondents, and his duties on the day on which he was injured consisted in stacking bundles of sacks in a room in the respondents' premises. The work

**WORKMEN'S COMPENSATION (Accident)—**  
**ing out of and in the course of Employment)—**  
*continued.*

was done by hand. In the room in which this was being done there ran along the ceiling a shaft which transmitted power to machines in other rooms, but there were no pulleys on the shaft in this room, and it was not used in connection with any machine in this room. The sack had arrived at the height of about seven feet and the bundles could no longer be thrown up from the bottom. The appellant, who was on the top of the stack, then improvised a method of getting up the sacks. He put a rope round the revolving shafting, attached one end to the bundle, and sufficient tension being put on the other end of the rope to ensure friction the sack was drawn up as by a crane. A bundle of sacks was drawn too far and stuck between the shafting and the ceiling. The appellant, to free the bundle, cut the rope. The bundle fell, and falling on the bundle on which the appellant was standing caused him to lose his balance. In his effort to recover equilibrium one arm got entangled with the rope which was round the shafting, he was pulled over the shafting and severely injured.

The county court judge made an award in favour of the appellant.

The H. L. dismissed the appeal, being of opinion that the appellant had failed to shew any circumstances which could justify a finding that the accident arose out of his employment. *PLUMB v. COBDEN FLOUR MILLS Co.*

[1913] W. N. 387 ; 30 T. L. R. 174

Return Home or to Work.

See above, *Employment, Break in, Removal from, Termination of.*

Serious and Wilful Misconduct.

See above, *Prohibited Act.*

**Accident—Claim.**

*Claim late—Ignorance of rights under the Act—Not a reasonable cause for delay—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1.*

A workman failed to make a claim within six months of the accident owing to his ignorance of the existence of the Act :—

*Held*, this was not a mistake or other reasonable cause within the meaning of the Act, and he was barred from recovering compensation. *MELVILLE v. MC CARTHY*  
 C. A. (Ir.) [1913] W. C. & Ins. Rep. 353

*Ship—Seaman—Time for taking proceedings—Absence from the United Kingdom—"Occasioned by"—Possibility of return within six months—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1 (b).*

A sailor employed on board a ship on the west coast of South America met with an accident in Oct., 1910, as a result of which he sustained a severe wound on the head. The captain took him on shore and had the wound stitched up, but he did not recover, and was eventually discharged. He went to various hospitals in America, but in vain, and was sent back to England in Sept., 1912, as a

**WORKMEN'S COMPENSATION (Accident —**  
**Claim)—continued.**

distressed seaman. In Nov., 1912, he made a claim for compensation under the Workmen's Compensation Act, 1906, and the county court judge found that his failure to make a claim within six months was "due to" his absence from the United Kingdom, although he might have returned to England as a distressed seaman in time to make a claim within six months from the date of the accident, as provided by s. 2, sub-s. 1 (b), of the Act :—

*Held*, that no distinction could be drawn between the words "due to" used by the judge and the language of the Act "occasioned by"; that whether the workman's delay in claiming was occasioned by absence from the United Kingdom or not was a question of fact to be decided by the judge; and that the applicant ought not to be precluded from obtaining compensation because he had stuck to his work. *DIGHT v. OWNERS OF SHIP CRASTER HALL*

C. A. [1913] 3 K. B. 700 ; 82 L. J. (K. B.) 1307 ;  
 6 B. W. C. C. 674 ; 109 L. T. 200 ;  
 [1913] W. N. 259 ; 29 T. L. R. 676

See below, *Accident—Notice.*

**Accident—Injury.**

*Death*, col. 726.

*Incapacity*, col. 727.

*Supervening Infirmary or Incapacity*  
 col. 729.

*Death.*

— Injury by accident—Heart failure.

See above, *Accident—Evidence.*

*Novus actus interveniens—Workman suffering from femoral hernia due to accidental strain—Workman also suffering from inguinal hernia of long standing—Operation necessary for cure of femoral hernia—Both hernias operated on on same occasion—Subsequent death of workman from heart failure—Heart failure due to heart weakness and heart degeneracy set up by strain of operation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (a).*

*Held*, that the operation was not a novus actus interveniens, and that the death was the result of the accident. *THOMSON v. MUTTER HOWEY & Co.*

Ct. Sess. [1913] W. C. & Ins. Rep. 241

*Pneumonia—Death after four years—Consequence of injury—Question of fact—Burden of proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

Where a workman suffers injury by accident and four years afterwards dies from pneumonia, it is a question of fact whether there is any connection between the death and the incapacity caused by the injury. The burthen of proof is upon the person claiming compensation to shew that the death was caused or accelerated by the accident. *TAYLORSON v. FRAMWELLGATE COAL AND COKE CO.*  
 C. A. [1913] W. C. & Ins. Rep. 179 ;  
 6 B. W. C. C. 56

— Rupture—Hernia.

See above, *Accident—Evidence.*



**WORKMEN'S COMPENSATION (Accident—Injury)—continued.***Incapacity.*

*After-effects — Neurasthenia — Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

On Sept. 2<sup>nd</sup>, 1911, a workman met with an accident in the course of his employment. His employers paid him compensation for three weeks, when he returned to work and continued at work for five weeks, when he was discharged. Thereafter, until Mar. 13, 1913, when he first made his claim for compensation, he was attended at intervals by doctors and was for three months in hospital. He was admittedly unfit for work. The county court judge found that he was suffering from neurasthenia, the result of the accident, and awarded him compensation :—

*Held*, that there was evidence to justify the finding of the county court judge. **MORRIS v. TURFORD AND SOUTHWARD**

C. A. [1913] W. C. & Ins. Rep. 502 ; 6 B. W. C. C. 606

*Evidence—Ability to do light work—Inability to get to work—Payment of full compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1), (3).*

A workman in the course of his employment had his foot badly crushed, whereby he was permanently incapacitated from doing his old work. He was capable of doing light work which did not necessitate standing, but he was only able to walk a very short distance, and his old employers' works were situated two miles away from where he lived. The county court judge found that the workman was so situated that there was no reasonable chance of his obtaining any other work, and that he was therefore totally incapacitated for work within the meaning of the Workmen's Compensation Act, 1906 :—

*Held*, that the evidence justified the finding of the county court judge. **BEDDARD v. STANTON IRONWORKS CO.**

C. A. [1913] W. C. & Ins. Rep. 535 ; 6 B. W. C. C. 627

*Injury to finger — Uncontradicted medical evidence of complete recovery—No evidence to support finding of incapacity—Workmen's Compensation Act, 1906, Sched. I. (1) (b).*

A boy, employed as a printer, met with injury by accident to his finger, causing incapacity, for which the employers paid him compensation for some weeks. A month after payments had ceased he applied for an award, alleging continuing incapacity. There was uncontradicted medical evidence that he had completely recovered, and was fit to work. The county court judge, however, found that incapacity was still continuing, and made an award in the boy's favour. A fortnight after the award the boy secured work at higher wages than he had previously earned :—

*Held* (Kennedy L.J. dissenting), that there was no evidence to support the finding. **BINNS v. KEARLEY & TONGE, LD.**

C. A. 6 B. W. C. C. 608

**WORKMEN'S COMPENSATION (Accident—Injury)—continued.**

*"Serious and permanent disablement"—Loss of top joint of middle finger of right hand—Accident due to serious and wilful misconduct—Workmen's Compensation Act, 1906, s. 1, sub-s. 2.*

A county court judge found the amputation of the top joint of the middle finger of the right hand of a machinist in the joinery trade to be serious and permanent disablement within the meaning of s. 1, sub-s. 2 :—

*Held*, there was evidence to support the finding. **BREWER v. SMITH**

C. A. 6 B. W. C. C. 651

*Subsequent employment in different work—Evidence—Reference to medical referee—Judge acting on report—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

A workman employed in certain ironworks was injured by fire in 1907, and on recovery from total disablement was subsequently given light work by the same employers at a slightly higher wage. In 1912 the works were closed temporarily, and on the resumption of work the employers declined to take the workman back into their employment except at the old work he did prior to the accident, which he refused, and evidence was given that he was now incapable of doing any but light work. He claimed compensation for the accident suffered in 1907 :—

*Held*, that upon a conflict of evidence as to whether his present incapacity was caused by the accident, the arbitrator was justified in referring the question to the medical referee, and upon his report declining to award compensation to the workman. **HUGGINS v. GURST, KEEN & NETTLEFOLDS, LD.**

C. A. [1913]  
W. C. & Ins. Rep. 191 ; 6 B. W. C. C. 80

*Total incapacity—Ship painter injures eye—Workman alleges loss of vision greater than seems apparent—Judge refers to medical referee—Referee reports that if workman's statement truthful then he is incapacitated as ship's painter—Award of total incapacity—Average weekly earnings—Workmen's Compensation Act, 1906, Sched. I. (1) (b).*

A ship's painter injured his eye. He had only been employed three weeks. The employers paid 14s. 4d. a week compensation for eleven weeks, and, on this being stopped, the workman applied for compensation on the basis of total incapacity, stating his average earnings to be 36s. a week. At the hearing there was evidence that ship's painters were paid 6s. a day, but could earn as much as 12s. when they did overtime at night. With regard to the condition of the eye the medical evidence was unsatisfactory to the county court judge. The employers' doctor stated that, if what the workman said about his eye were true, then he would be unfit for the work of ship's painter. The judge referred the question of the present capacity of the man to do painter's work to a medical referee, who reported that the injury to the eye was insufficient to account for the alleged loss of vision, that he was unable to say whether the

**WORKMEN'S COMPENSATION (Accident — Injury)—continued.**

man was telling the truth, that in his opinion he was exaggerating, but that if he was telling the truth he was unfit for the work of ship's painter, but could do work that did not necessitate the use of a ladder. Upon this the county court judge found that the man was totally incapacitated by accident arising out of and in the course of his employment, and awarded £1 a week compensation on the basis that his average weekly earnings were 45s. :—

*Held*, there was evidence to support the finding of total incapacity from the accident but none that the average weekly earnings were 45s. The case must therefore be remitted to assess compensation on a proper basis, *JAMES v. MORDEY, CARNER & Co., LD.*  
C. A. 6 B. W. C. C. 680; 109 L. T. 377

*Supervening Infirmity or Incapacity.*

*Disease — Accident — Supervening disease — Incapacity resulting from accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

A workman met with an accident in the course of and arising out of his employment which made it necessary to remove a cartilage from his knee. After the operation, which appeared successful, he caught scarlet fever while in a provincial hospital and was removed to an isolation hospital. While he was there, the wound became unhealthy and suppurated. Another operation was then found necessary which caused the knee to become permanently stiff and immovable. There was evidence that the scarlet fever alone could not have caused the incapacity, if there had been no accident, but that it had aggravated the effects of the accident :—

*Held* (reversing the decision of the county court judge), that the incapacity was caused by the accident, and that the workman was entitled to compensation under the Workmen's Compensation Act, 1906. *BROWN v. GEORGE KENT, LD.*  
C. A. [1913] 3 K. B. 624; 82 L. J. (K. B.) 1039; 6 B. W. C. C. 745; 109 L. T. 293; [1913] W. N. 258; 29 T. L. R. 702

*Imprisonment — Incapacity — Supervening incapacity not due to accident—Right to compensation not affected—Injury arising out of and in the course of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

A workman was injured on July 31, 1912. The employers admitted liability under the Workmen's Compensation Act, 1906, and paid him compensation at the rate of 11. a week. On Jan. 8, 1913, the workman was arrested and on Jan. 21 sentenced to eighteen months' imprisonment with hard labour for larceny from the person. The employers thereupon ceased to pay the compensation. The workman issued a request for arbitration claiming 11. weekly. The employers resisted the claim on the grounds (1.) that all incapacity ceased on Jan. 18, 1913; (2.) that the present incapacity was not due to the accident; and (3.) that they were not liable to pay

**WORKMEN'S COMPENSATION (Accident — Injury)—continued.**

compensation during the continuance of the workman's detention in prison. The county court judge found that the workman was still partially incapacitated as the result of the accident and held that he was not deprived of his right to be paid compensation by reason of his being in prison, and he awarded him 12s. a week during partial incapacity :—

*Held*, that the supervening incapacity arising from his imprisonment was not a reason for depriving the workman of compensation.

Principle laid down in *Harwood v. Wyken Colliery Co.* [1913] 2 K. B. 158, followed. *M McNALLY v. FURNESS, WITHEY & Co., LD.*

C. A. [1913] 3 K. B. 605; 82 L. J. (K. B.) 1310; 6 B. W. C. C. 664; 109 L. T. 270; [1913] W. N. 239; 29 T. L. R. 678

*Miner twisting his back in December, 1911—Compensation paid in respect of injury by accident arising out of and in the course of his employment until May 22, 1912—Miner resuming his old work on May 27, 1912—Miner totally incapacitated on August 15 by aneurism—Finding by arbitrator that the aneurism was the result of the workman doing work beyond his physical powers between May 27 and August 15—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

*Held*, that there was evidence upon which the arbitrator could competently find that the workman's incapacity was not due to injury by accident arising out of and in the course of his employment. *PATON v. WILLIAM DIXON, LD.*  
Ct. Sess. [1913] W. C. & Ins. Rep. 517

*Right to compensation not affected—Injury by accident arising out of and in the course of employment.*

A workman who has brought himself within the provisions of the Workmen's Compensation Act by proving that he has sustained personal injury by accident arising out of and in the course of his employment, and that incapacity has resulted from the injury, is not disentitled to compensation under the Act by reason of some supervening infirmity, not due to the accident, which has equally resulted in his incapacity. *HARWOOD v. WYKEN COLLIERY CO.*  
C. A. [1913] 2 K. B. 158; 82 L. J. (K. B.) 414; [1913] W. C. & Ins. Rep. 317; 6 B. W. C. C. 225; 108 L. T. 283; [1913] W. N. 53; 29 T. L. R. 290; 57 S. J. 300

**Accident—Notice.**

*Delay, col. 730.*

*Validity, col. 733.*

*Delay.*

*Accident while in employment—Second accident on same day while not in employment—Claim for compensation—Proceedings not maintainable—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1 (a).*

A miner sustained an injury to his hand which he alleged was caused by an accident while working in his employer's mine. On the same day he fell down the steps of an inn

**WORKMEN'S COMPENSATION (Accident—Notice)—continued.**

and hurt himself. He claimed compensation for injury to his hand caused by accident in the mine. He did not give formal written notice of this accident until ten days after it had occurred :—

*Held*, that, the notice was not given as soon as practicable after the accident, that the employers were thereby prejudiced in their defence, that there was no reasonable cause for the delay in giving notice, and that the proceedings were not therefore maintainable. **MURPHY v. SHIREBROOK COLLIERY LD. C. A. [1913] W. C. & Ins. Rep. 124 ; 6 B. W. C. C. 237**

*Claim for compensation nearly seven months after disablement—Lad falls ill from lead poisoning—In bed for months—Advised by doctor to do no business—Notice as soon as able to get up five months later—Reasonable cause for delay—Workmen's Compensation Act, 1906, s. 2, sub-s. 1.*

A lad, a painter, left off work because he felt ill on July 15, 1912. On Aug. 13 he consulted a doctor who sent him to bed, and he did not get up until Dec. The doctor told the lad to leave everything alone and not to worry about business. In Dec., as soon as he could get out, the lad went to the employers and told them all about his illness, saying that the doctor thought it was lead poisoning. The employers' secretary wrote this down. The lad subsequently became worse, and on Feb. 11, 1913, his solicitor made a formal claim for compensation, and on Feb. 13 the certifying surgeon gave his certificate that the boy was suffering from lead poisoning, and stating that the disablement commenced in the last week of July, 1912. The certificate was appealed against, but the medical referee dismissed the appeal. On the application for compensation the county court judge found (1.) that notice of the accident was given as soon as practicable after the happening thereof ; (2.) that a claim for compensation was in fact made within six months of the time of the accident ; (3.) that in any case failure to give notice (if any) did not prejudice the employers in their defence ; and (4.) that if his previous findings were not justified, delay in notice and claim was occasioned by reasonable cause :—

*Held*, there was evidence to support the findings. **SANDERSON v. PARKINSON & SONS, LD. C. A. 6 B. W. C. C. 648**

*Delay in giving written notice—Employer not prejudiced in his defence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1 (a).*

On Nov. 28, 1912, a workman was injured by an accident in his employment. He informed the manager of his injury directly afterwards. He was given half wages for some time, the employer alleged, as a loan. He did not give written notice of the accident to his employer until April 1, 1913 :—

*Held*, that the employer had not been "prejudiced in his defence" by the want of notice. **RALPH v. MITCHELL C. A. [1913] W. C. & Ins. Rep. 501 ; 6 B. W. C. C. 678**

"Mistake or other reasonable cause"—Work-

**WORKMEN'S COMPENSATION (Accident—Notice)—continued.**

*men's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1.*

In an arbitration under the Workmen's Compensation Act, 1906, the arbitrator found that the claimant alleged that he was injured by an accident on June 1, 1911 ; that thereafter he suffered from pain in his neck and shoulders, which he attributed to the accident ; that on Aug. 5 he consulted a doctor, who diagnosed his trouble as, and treated him for, muscular rheumatism ; that on Nov. 11 the claimant left his employment and thereafter was treated for severe strain of the neck ; that on Dec. 13 he consulted another doctor, who told him that he was suffering from partial dislocation of the head from the spine, and advised him that his case was dangerous and required treatment in a hospital ; that in Jan., 1912 (*i.e.*, after he had left his employment and more than six months after the accident) he for the first time gave notice of the accident to his employers and claimed compensation from them :—

*Held* that, as the delay in giving notice and claiming compensation was due to the workman's ignorance of the serious nature of his injury, it was occasioned by "mistake or other reasonable cause," within the meaning of s. 2, sub-s. 1, of the Act, and so was not a bar to the maintenance of proceedings for compensation. **ELLIS v. THE FAIRFIELD SHIP-BUILDING AND ENGINEERING CO., LD.**

**Ct. Sess. 1912 S. C. 217 ; [1913] W. C. & Ins. Rep. 88 ; 6 B. W. C. C. 308**

*Notice not given "as soon as practicable"—Employer "prejudiced in his defence"—Delay occasioned by "mistake or other reasonable cause"—Claim for compensation—Proceedings not maintainable—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1 (a).*

A workman engaged in a colliery slightly injured his hand while loading coal on Thursday, Nov. 7, 1912. It was a mere scratch which he did not regard as serious, and he went to work on the following Friday and Saturday. On the Sunday following, however, his hand began to swell and gave him pain, and on the Monday, although it was in a bad condition, he returned to work. On Tuesday he saw a doctor for the first time and found he had septic poisoning, of which he then verbally informed the under-manager of the colliery. He gave no written notice until Nov. 21, 1912. In proceedings for recovery of compensation :—

*Held*, that notice was not given "as soon as practicable" as required by s. 2, sub-s. 1, of the Workmen's Compensation Act, 1906, that the want of notice was not occasioned by mistake or other reasonable cause within the meaning of proviso (a) to sub-s. 1, that the employers had been thereby prejudiced in their defence, and that the proceedings were not therefore maintainable. **SNELLING v. NORTH HILL COLLIERY CO. C. A. [1913] W. C. & Ins. Rep. 497 ; 6 B. W. C. C. 507 ; 105 L. T. 81**

Patent injury—Expectation of recovery—

**WORKMEN'S COMPENSATION (Accident — Notice)—continued.**

*Reasonable Cause—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1.*

On April 3, 1912, a workman injured his right leg while working in his employment. He said that he suffered great pain; nevertheless he continued to work for two months, during the whole of which time he said he was in pain, but that he expected every day to get better. On June 1, while going home, his right knee suddenly stiffened and he had to be carried home. He gave no notice of the accident to his employers until June 25. The county court judge held that the employers were prejudiced by the delay in giving notice, but that there was reasonable cause for the delay—namely, that the injury did not prevent the workman from working, and that he reasonably believed it would not do so. On appeal:—

*Held*, that, the injury being known to the workman from the first, and causing daily pain, his expectation of recovery was not a "reasonable cause" for the delay. WEBSTER v. COHEN BROTHERS - C. A. [1913] W. C. & Ins. Rep. 268; 6 B. W. C. C. 92; 108 L. T. 197; 29 T. L. R. 217; 57 S. J. 244

*Two accidents—Light work found after first accident—Recovery from second accident—Incapacity from first accident continuing—Question to be considered—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

The appellant suffered a severe accident while working for the respondents in 1908. He partially recovered and was found light work by the respondents from Nov., 1909, until Mar., 1911, when he suffered another slight accident. He was paid compensation for a time, and then the respondents stopped payment on the ground that he had fully recovered from the second accident. He was unable to obtain work owing, it was alleged, to the results of the first accident. On an application for compensation in respect of the first accident the arbitrator found that he was no more incapacitated from working at his employment than he was before the day of the second accident, and refused compensation:—

*Held*, that the question to be determined was not whether the appellant was no more incapacitated than on the day before the second accident, but whether he was still incapacitated from the results of the first accident; and that as the arbitrator had not asked himself the right question, the case should be sent back for him to deal with it. WILKINSON v. FRODINGHAM IRON AND STEEL CO. - C. A. [1913] W. C. & Ins. Rep. 335; 6 B. W. C. C. 200

**Validity.**

*Verbal notice—No notice to principal for four months—Expectation that sub-contractor would give notice—Claim against principal—Prejudice—Mistake—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2, sub-s. 1.*

GRIFFITHS v. ATKINSON - C. A. 106 L. T. 852

*See also above, Accident—Claim.*

**WORKMEN'S COMPENSATION—continued.****Agreement.**

*See below, Compensation.*

**Appeal.**

*See below, Compensation—Appeal.*

**Arbitration.**

*See below, Compensation.*

**Claim.**

*See above, Accident—Claim.*

**Compensation—Agreement.**

*Recording Memorandum, col. 734.*

*Rectification of Register, col. 734.*

*Setting Aside, col. 735.*

**Recording Memorandum.**

*Application to record memorandum—Objections to recording of memorandum on grounds of inadequacy and imputation—Objections stated by workman to sheriff-clerk, and documents submitted by sheriff-clerk to sheriff—Minute subsequently lodged by workman, on advice of sheriff-clerk, objecting to the recording of the memorandum—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (9) (d); Act of Sederunt, June 26, 1907, s. 12.*

*Held*, that the questions of inadequacy and imputation were competently raised by the minute for the workman. BURNS v. WILLIAM BAIRD & Co. Ct. Sess. [1913] W. C. & Ins. Rep. 61; 6 B. W. C. C. 362

*Compensation paid on receipt bearing that sums paid were accepted as the "compensation payable during the period of total incapacity"—Memorandum lodged by workman narrating agreement in general terms without reference to payment during total incapacity—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (9).*

*Held*, that workman was not entitled to have his memorandum registered. A. G. MOORE & Co. v. PRYDE - Ct. Sess. [1913] W. C. & Ins. Rep. 100; 6 B. W. C. C. 384

— Costs.

*See below, Costs.*

**Rectification of Register.**

*Mistake of fact—Removal of record from register—Jurisdiction—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II., par. 9 (c), (e).*

On the day before her twenty-first birthday a workgirl was injured by accident in her employment. The employers agreed to pay her full wages (8s. 2d. per week) during incapacity, as prescribed by Sched. I. (1), proviso (b), of the Workmen's Compensation Act, 1906. A memorandum of this agreement was recorded. The employers afterwards became aware that in a possible view of the law the girl was not under the age of twenty-one years at the time of the injury, and more than six months after the agreement had been recorded, they sought to have the register rectified. The

**WORKMEN'S COMPENSATION (Compensation—Agreement)—continued.**

agreement was not obtained by fraud or other improper means :—

*Held*, that there was no jurisdiction either to rectify the register under Sched. II., par. 9 (c), by altering the memorandum, or to order the record to be removed from the register under Sched. II., par. 9 (c). *SCHOFIELD v. W. C. CLOUGH & Co.* - C. A. [1913] 2 K. B. 103; 82 L. J. (K. B.) 447; [1913] W. C. & Ins. Rep. 292; 6 B. W. C. C. 66; 108 L. T. 532; 57 S. J. 243

*Setting Aside.*

*Agreement for redemption of compensation by payment of lump sum—Reduction of agreement—Mutual error as to extent of injury—Agreement in settlement of claim for compensation—Liability denied, but claim settled as though compensation due—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3, and Sched. I. (17), Sched. II. (9).*

A workman, with the advice of his lawyer, agreed with his employers to accept a lump sum in settlement of a claim for compensation due to him in respect of injuries caused by an accident, and a memorandum of the agreement was recorded.

In a subsequent action for reduction of the memorandum he averred that both parties were in error as to the extent of his injuries at the time when the agreement was made, both being under the belief that he would recover in a few weeks, whereas, as it turned out, he was permanently incapacitated :—

*Held*, that these averments did not disclose a relevant ground for setting aside the agreement.

*Held*, that an agreement between a workman and his employers for the settlement of a claim for compensation by payment of a lump sum may be an "agreement" in the sense of the Workmen's Compensation Act (and so recordable), even though the employers dispute liability to pay compensation, if, in fact, they have agreed to the amount of the payment being fixed as though they were liable under the Act. *M'GUIRE v. G. PATERSON & Co.*

Ct. Sess. 1913 S. C. 400; [1913] W. C. & Ins. Rep. 107; 6 B. W. C. C. 370

*Terms—Concurrent employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3; Sched. I. (2) (b).*

A workman met with an accident on Aug. 26, 1911, and received from his employers a payment of 12s. 5d. a week by way of advance, while he was proceeding against a firm of contractors to recover damages in respect of his injury from their alleged negligence. This action failed, and his solicitors then wrote to his employers as to the proper amount of the compensation, and claimed an increased amount. The employers denied that the workman was entitled to more than 12s. 5d. a week, and ultimately, on April 29, 1912, his solicitors wrote a letter in which they said that they assumed "that the weekly payments will be continued." Payment continued to

**WORKMEN'S COMPENSATION (Compensation—Agreement)—continued.**

be made at 12s. 5d. a week, the workman giving receipts for it as "compensation." On Mar. 18, 1913, the workman commenced proceedings to recover an increased amount of compensation on the ground that, while his average weekly earnings from these employers were 11. 4s. 10d., he had also earned 4s. 6d. a week in a concurrent employment :—

*Held*, that the county court judge was justified in holding that the workman had entered into an implied contract to accept 12s. 5d. a week as his compensation. *FERRITER v. PORT OF LONDON AUTHORITY*

C. A. [1913] W. C. & Ins. Rep. 455; 6 B. W. C. C. 732

*Recording of memorandum of agreement—Finding by arbitrator that an agreement had been made to pay 15s. 1d. per week in terms of the Workmen's Compensation Act, 1906—Memorandum stating that the respondents agreed to pay 15s. 1d. per week, "continuing the payment thereof until the same is ended, diminished . . . in terms of the . . . Act."—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (9).*

*Held*, that the memorandum truly expressed the agreement found proved. Opinions, *per* Lord Kinnear and Lord Johnston, that the duration of compensation being fixed by the Act was not matter for agreement. *PEARSON v. BABCOCK & WILCOX, LD.*

Ct. Sess. [1913] W. C. & Ins. Rep. 430

**Compensation—Arbitration.**

*Appeal, col. 736.*

*Joinder of Proceedings, col. 737.*

*Preliminary Defences, col. 737.*

*Question, col. 737.*

*Res Judicata, col. 738.*

*Appeal.*

*Appeal by workman against part of award—Acceptance by workman of payments of compensation under award—Right of appeal lost.*

After a workman has accepted payments of compensation under an award, he cannot appeal against a part of it ordering him to pay costs and giving the employer liberty to set off those costs at a certain rate per week against the weekly sum payable for compensation.

*Johnson v. Newton Fire Extinguisher Co.* [1913] W. C. & Ins. Rep. 352, followed. *STROEWER v. AEROGEN GAS CO.*

C. A. [1913] W. C. & Ins. Rep. 578

*Award accepted and acted on—Subsequent appeal from part of award—Approbate and reprobate—Right to appeal—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (4).*

A workman having sustained personal injury within the meaning of the Workmen's Compensation Act, 1906, an agreement was recorded whereby his employers admitted liability and agreed to pay compensation. A question having arisen as to the amount to

**WORKMEN'S COMPENSATION (Compensation—Arbitration)—continued.**

be paid, the workman applied for arbitration. The employers offered to submit to an award of 12s. 8d. a week, and the learned judge awarded compensation at that rate. He also ordered the employers to pay costs up to the receipt of their submission, and the applicant to pay the subsequent costs with a set-off. The applicant accepted the 12s. 8d. per week and the costs were taxed, but he shortly afterwards appealed from part of the order as to costs:—

*Held*, on appeal, that inasmuch as the applicant had accepted and acted upon the award, he could not appeal against it. *JOHNSON v. NEWTON FIRE EXTINGUISHER CO.*

C. A. [1913] 2 K. B. 111; 82 L. J. (K. B.) 541; [1913] W. C. & Ins. Rep. 352; 6 B. W. C. C. 202; 108 L. T. 360; [1913] W. N. 37

*Award by arbitrator appointed by county court judge—Appeal to Court of Appeal—Application to extend time for appealing—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (3), (4).*

No appeal lies direct to the C. A. from the award of an arbitrator appointed by a county court judge under Sched. II., cl. 3, of the Workmen's Compensation Act, 1906. An application to extend the time for appealing from such an award will therefore not be entertained.

*Gibson v. Wormald & Walker, Ltd.* [1904] 2 K. B. 40, followed. *GRAY v. SOUTHERN CORPORATION* C. A. [1913] W. C. & Ins. Rep. 393

**Joinder of Proceedings.**

*Conjunction of processes in sheriff court—Application to record memorandum of agreement as to compensation for accident, proceeding at same time and between same parties as claim for compensation in respect of same accident originating by initial writ—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).*

*Held*, that it was incompetent to conjoin the two proceedings. *ARNISTON COAL CO. v. KING* - Ct. Sess. [1913] W. C. & Ins. Rep. 388

**Preliminary Defences.**

*Procedure—Duty of arbitrator to dispose of whole case—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).*

Where an arbitrator had allowed a separate proof on preliminary defences and had issued findings thereon without having heard the case as a whole:—

*Held* that, there being no exceptional circumstances calling for the procedure followed, the arbitrator ought to have heard and disposed of the case as a whole.

Observations per Lord Kinnear in *Runkin v. Alloa Coal Co., Ltd.* (1903) 5 F. 1164, at p. 1169, approved. *ELLIS v. FAIRFIELD SHIP-BUILDING AND ENGINEERING CO.* - Ct. Sess.

1912 S. C. 217; [1913] W. C. & Ins. Rep. 88

**Question.**

*Arbitrator—Appeal—Finality—Certificate of refusal by arbitrator to include as a question of*

**WORKMEN'S COMPENSATION (Compensation—Arbitration)—continued.**

*law in his stated case the question "whether there was evidence . . . which could competently support his findings of fact"—Note for order upon arbitrator to state a case—Note setting forth the facts proved in terms differing from findings by arbitrator—No averment of insufficient evidence or of improper admission of evidence to prove any of arbitrator's findings—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

*Held*, that the arbitrator was final upon the facts, and note refused. *NELSON v. ALLAN BROTHERS & CO. (U. K.), Ltd.*

Ct. Sess. [1913] W. C. & Ins. Rep. 532

*Condition precedent—Question arising as to the liability to pay compensation or as to amount or duration of compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3.*

*PAYNE v. N. FORTESCUE & SONS, LD.*

C. A. [1912] 3 K. B. 346; 81 L. J. (K. B.)

1191; 5 B. W. C. C. 634; 137 L. T. 136;

[1912] W. N. 216; 57 S. J. 81

*Duration of compensation—Competency—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3.*

The employers of a workman, who had been totally incapacitated by an accident, admitted liability under the Workmen's Compensation Act, 1906, tendered the amount of compensation due (as to which there was no dispute), and requested the workman to sign a receipt which contained this clause: "At the first or any subsequent payment liability is admitted only for the compensation to date of payment. Further liability, if any, will be determined week by week, when application is made for payment." The workman objected to this clause on the ground that he was entitled to have an unqualified admission of liability, such as he could embody in a memorandum of agreement for the purpose of recording, and he refused to sign the receipt and initiated arbitration proceedings:—

*Held*, that a question had arisen between the parties as to the duration of compensation, and that the arbitration was competent.

*Payne v. N. Fortescue & Sons, Ltd.* [1912] 3 K. B. 346, and *Gourlay Brothers & Co. (Dundee), Ltd. v. Sweeney* (1906) 8 F. 965, considered.

Interlocutor of the Second Division of the Ct. of Sess. in Scotland, 1912 S. C. 1145, affirmed. *SUMMERLEE IRON CO., LD. v. FREELAND* - H. L. (Sc.) [1913] A. C. 221;

1913 S. C. (H. L.) 3; 82 L. J. (P. C.) 102;

[1913] W. C. & Ins. Rep. 302; 6 B. W. C. C.

255; 108 L. T. 465; [1913] W. N.

34; 29 T. L. R. 277; 57 S. J. 281

**Res Judicata.**

*Original application—Weekly payment ended by arbitration—Second application for compensation—Power of arbitrator to award again—Res judicata—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3.*

A workman having sustained personal injury by an accident, his employers volun-

**WORKMEN'S COMPENSATION (Compensation—Arbitration)—continued.**

taxily paid him 10s. a week compensation for some months and then declined to continue the payments. The workman applied for arbitration under the Workmen's Compensation Act, 1906, and claimed a continuance of the payment. The county court judge found in favour of the employers and refused to make an award for 1d. a week so as to keep alive the workman's rights. There was no appeal from this award. Subsequently the workman applied again for compensation, but the judge refused to entertain the application, holding that the matter was *res judicata* and that he had no jurisdiction:—

*Held*, on appeal, that the learned judge had jurisdiction to make a final award or a suspensory award on an original application, and that the matter was therefore *res judicata*. *GREEN v. CAMMELL, LAIRD & Co., LD.*

C. A. [1913] 3 K. B. 665; 82 L. J. (K. B.) 1230; 6 B. W. C. C. 735; 109 L. T. 202; [1913] W. N. 259; 29 T. L. R. 703

**Compensation—Assessment.***“Average Weekly Earnings.”*

*Basis of calculation—Deductions from wages—Working in gangs—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., s. 2 (a), (d).*

In a claim for compensation under the Workmen's Compensation Act, 1906, founded upon the average weekly earnings of the workman, it appeared that his work was that of a miner of ironstone, and he formed one of a gang of fifteen men similarly employed. In getting the ironstone it was necessary to remove sand and use gunpowder for blasting. The gang were paid at the rate of 6½d. per ton for ironstone plus a bonus of 3¼ per cent., and 2¼d. per yard for sand with a bonus of 6½ per cent. From the aggregate of these sums was deducted the value of the powder used by the gang, and the net sum was paid to the ganger, who distributed it amongst the men in proportion to the number of hours they had worked. The employers provided the powder at cost price. The workman claimed 14s. 7d. per week on the ground that his average weekly earnings had been 1l. 9s. 2d., namely, his share of the full amount due to the gang without deducting anything for powder supplied to them. The employers contended that 3s. a week per man for powder ought to be deducted from the wages, and that the applicant was only entitled to half of 1l. 6s. 2d.:—

*Held*, that Sched. I., s. 2 (d), of the Act did not apply; that the employers had only contracted to pay the applicant an aliquot share of the gross earnings of the gang less the value of the powder used by them; and that he was only entitled to compensation at the rate of half of 1l. 6s. 2d. *SHIPP v. FRODINGHAM IRON AND STEEL CO., LD.*

C. A. [1913] 1 K. B. 577; 82 L. J. (K. B.) 273; [1913] W. C. & Ins. Rep. 230; 6 B. W. C. C. 1; 108 L. T. 55; [1913] W. N. 16; 29 T. L. R. 215; 57 S. J. 264

**WORKMEN'S COMPENSATION (Compensation—Assessment)—continued.**

*Basis of calculation—Number of days actually worked—Result in weeks—Division into total sum actually earned—Deduction of days lost through illness—“De minimis non curat lex”—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (2) (a).*

In the case of a workman whose death results from an injury, and who has been under three years in his employment, his average weekly earnings in continuous employment at an hourly wage paid weekly may be estimated under the Workmen's Compensation Act, 1906, Sched. I., clause 2 (a), by adding up the total number of days on which he actually worked during the period of employment, days lost through illness being deducted, reckoning this number of days in weeks, and dividing this number of weeks into the total sum actually earned during the period of employment; but the period must be sufficiently long to enable a fair average to be so obtained and the days lost through illness must not be excessive, and any slight error in the calculation will be disregarded. *TURNER v. PORT OF LONDON AUTHORITY - C. A. [1913] W. C. & Ins. Rep. 123; 6 B. W. C. C. 23; 29 T. L. R. 204*

*Casual employment—Basis of computation—“Grade”—Dock strike—Strike breaker—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., s. 1 (b); s. 2 (a).*

By the Workmen's Compensation Act, 1906, Sched. I., s. 1 (b), the compensation for an injury under the Act is a weekly payment based upon the average weekly earnings of the workman during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer. By s. 2 (a), “Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.”—

*Held*, that it is for the county court judge in abnormal circumstances to decide what were the average weekly earnings of the workman, and for that purpose he is entitled to take into consideration the nature of the employment, its terms and duration, and the personal qualifications of the workman; but the question whether upon the facts found by him there are two grades or only one grade of employment may be a question of law upon which an appeal will lie.

**WORKMEN'S COMPENSATION (Compensation—Assessment)—continued.**

In the first of two claims under the Act the claimant, an able seaman, who could do ship painting and rigging work, was taken on at the London Docks as an "extra casual labourer," and the next day met with an accident. In the docks labourers were divided into A labourers with permanent employment and B labourers who had admission tickets and got employment after the A labourers. Extra casual labourers had a chance of work after the B labourers and at the same rate of pay.

The county court judge held that the B labourers and "extra casual labourers" formed only one grade and awarded compensation having regard to the wages of the B labourers:—

*Held* (Cozens-Hardy M.R. dissenting), that the B labourers and the "extra casual labourers" formed or might form separate grades, and that the case must be remitted to the county court for reconsideration.

In the second claim the claimant, a workman whose ordinary occupation of a meat porter had been suspended owing to a strike at the docks, obtained employment at the docks as a strike breaker, being taken on as an "extra" casual labourer each day for twelve continuous days until his accident. He was given a ticket of admission within the dock gates, but the ticket did not ensure actual employment. For his first completed week he earned 26s. 10d., and there was every probability that but for his accident he would have been continuously employed until the end of the dock strike, which lasted for some five weeks after the accident.

The county court judge took the actual earnings of the first completed week as his guide and awarded the applicant a weekly payment of 13s. 5d. during incapacity:—

*Held*, that the county court judge, in taking as his guide, in the abnormal circumstances of the case, 26s. 10d. as the normal wage for a normal six days, had not taken a wrong view of the law, and that the award must stand. *BARNETT v. PORT OF LONDON AUTHORITY*. *PRIESTLEY v. PORT OF LONDON AUTHORITY*.

C. A. [1913] 2 K. B. 115; 82 L. J. (K. B.) 353; [1913] W. C. & Ins. Rep. 250; 6 B. W. C. C. 104; 108 L. T. 272; [1913] W. N. 35; 29 T. L. B. 252; 57 S. J. 282

*Casual employment—"Grade"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 2 (a).*

*EDGE v. J. GORTON, LD.*

C. A. [1912] 3 K. B. 360; 81 L. J. (K. B.) 1185; 5 B. W. C. C. 614; 107 L. T. 340; [1912] W. N. 212; 28 T. L. R. 566; 56 S. J. 719

*Continuous employment—Method of computing average weekly earnings—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 1 (a).*

A workman was killed as the result of an accident arising out of and in the course of his employment by the respondents. During the preceding three years he had worked for them

**WORKMEN'S COMPENSATION (Compensation—Assessment)—continued.**

for 119 weeks out of 156 weeks, and, when not employed by them during that period, he had worked for other persons. The period of continuous employment next preceding the accident had lasted eight weeks. The county court judge held that the workman had been in the continuous employment of the respondents during the preceding three years, and computed the workman's average weekly earnings by dividing the sum earned in the employment during the three years by the number of weeks of actual employment, and he awarded to the dependants 156 times that amount:—

*Held*, that the county court judge had misdirected himself, and that, but for a settlement effected between the parties, the case would have had to be reheard.

In computing the average weekly earnings of a workman under Sched. I., cl. 1 (a) (i.), regard can be had only to his earnings in the period of continuous employment next preceding the accident to him.

*Jones v. Ocean Coal Co.* [1899] 2 Q. B. 124; *Appleby v. Horseley Co.* [1899] 2 Q. B. 521; and *Giles v. Belford, Smith & Co.* [1903] 1 K. B. 843, applied. *GILL v. N. PORTSCUPE & SONS, LD.*

C. A. [1913] W. C. & Ins. Rep. 471; 6 B. W. C. C. 577

*Days lost because the employer had no work for the workman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 2.*

*WHITE v. WISEMAN*

C. A. [1912] 3 K. B. 352; 81 L. J. (K. B.) 1195; 5 B. W. C. C. 654; 107 L. T. 277; [1912] W. N. 216; 28 T. L. R. 542; 56 S. J. 703

*"Grade"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 2 (a).*

*JURY v. ATLANTA S.S. (OWNERS)*

C. A. [1912] 3 K. B. 366; 81 L. J. (K. B.) 1182; 5 B. W. C. C. 681; 107 L. T. 366; [1912] W. N. 218; 28 T. L. R. 562; 56 S. J. 703

*Seaman—Hospital charges—Workmen's Compensation Act, 1906, Sched. I. (3).*

A seaman, injured by accident arising out of and in the course of his employment, went to a hospital in the United Kingdom, where he received maintenance and medical treatment, which was subsequently paid for by the employer on an account rendered by the hospital. The arbitrator found that this payment was a benefit received by the seaman during the period of his incapacity:—

*Held*, that there was evidence to support the finding. *SORENSEN v. GAFF & CO.*

Ct. Sess. 6 B. W. C. C. 279

*Short period of employment—"Impracticable"—Future wages—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., s. 1 (b), s. 2 (a), s. 3.*

By the Workmen's Compensation Act, 1906, Sched. I., s. 1 (b), the compensation for an injury under the Act is a weekly payment based upon the average weekly earnings of the workman during the previous twelve



## WORKMEN'S COMPENSATION (Compensation—Assessment)—*continued.*

months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer. Sect. 2 (a): "Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, . . . it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, . . ."

In a claim for compensation under the Act it appeared that the workman had been in the employment of his employers at wages which averaged £l. 15s. per week for more than twelve months prior to Dec., 1910, when he left their employment. In May, 1911, he went to Canada, where he received wages averaging 5l. 8s. a week. In Nov. he returned to Bristol and made arrangements to transfer his family to Canada in April, 1912. To fill up the time he went back to his employers and worked for them for nine weeks at an average of £l. 9s. 6d. per week. In Feb. he sustained personal injury by accident.

On a question as to the amount of the average weekly earnings of the workman, the county court judge held that it was not impracticable to compute the rate of remuneration from the earnings during the period of nine weeks on the basis that the applicant was about to leave the country, and awarded 14s. 9d. per week:—

*Held*, on appeal, that the learned judge had jurisdiction to compute the average earnings on the footing that the employment of the applicant was only of a temporary character, and that the appeal must be dismissed. *GODDEN v. W. COWLIN & SON*

C. A. [1913] 1 K. B. 590; 82 L. J. (K. B.) 509; [1913] W. C. & Ins. Rep. 330; 6 B. W. C. C. 154; 108 L. T. 166; [1913] W. N. 87; 29 T. L. R. 255; 57 S. J. 282

## Compensation—Payment into Court.

"Registrar on receipt of the sum paid in, shall sign the receipt"—*Money tendered with Form 53—Signature by agent other than solicitor—Contrary to wording of form—Registrar refuses to accept unless signed by employer or his solicitor—Execution levied as result—Claim for damages against registrar—Workmen's Compensation Rules, 1907–1912, Rule 56A (4), Form 53.*

A settled amount, as to which a memorandum had been recorded, was sought to be paid into Court in favour of the widow of a deceased workman by a firm of shipowners, the employers. Form 53, which, by rule 56A (4), must accompany such payment, requires that it shall be signed by the employers or their solicitors. In this case, the form was signed by the Shipping Federation, Ltd., as agents for the

## WORKMEN'S COMPENSATION (Compensation—Assessment)—*continued.*

employers. The registrar refused to accept the amount unless the form were strictly followed with regard to signature, and on the widow levying execution the employers brought an action for damages against the registrar:—

*Held*, the registrar was wrong in refusing the form signed in this way. Form 53 was not an inflexible form, and was to be followed only so far as the circumstances of the case would permit. Judgment for plaintiffs. No costs. *THOMPSON & CO. v. FERRARO AND OTHERS*

Bailhache J. 6 B. W. C. C. 461; 57 S. J. 473

*Weekly payment . . . may . . . be redeemed . . . where the incapacity is permanent*—"One-armed man—Weekly payments in a condition of stability—Judge excludes personal knowledge of labour market—No misdirection—Workmen's Compensation Act, 1906 (6 *Edu.* 7, c. 58), *Sched. I.* (17).

On an application by the employers under *Sched. I.* (17) to redeem weekly payments being paid to a one-armed man, the county court judge found, on the evidence adduced at the hearing, that the weekly payments had arrived at a condition of stability, and therefore the man was entitled to have the payments redeemed on the basis of permanent incapacity (613L.). But the judge stated in his judgment that, if he had been entitled to take into consideration his own personal knowledge of the labour market, gained partly from other similar cases, he would have found that the weekly payments had not arrived at a condition of stability, and then he would only have awarded the man 300L.:—

*Held*, the judge properly excluded his personal knowledge and there was no misdirection.

*CALICO PRINTERS' ASSOCIATION v. BOOTH* (No. 2) - C. A. 6 B. W. C. C. 556; [1913] W. N. 229; 29 T. L. R. 664; 57 S. J. 662

## Compensation—Redemption.

*Weekly payment—Redemption by lump sum—Agreement—Registration of memorandum—Inadequacy of sum—Workmen's Compensation Act, 1906 (6 *Edu.* 7, c. 58), *Sched. I.*, clause 17; *Sched. II.*, clause 9 (d).*

In determining the adequacy or inadequacy of a lump sum agreed to be paid in redemption of a weekly payment under the Workmen's Compensation Act, 1906, the county court judge ought not to be guided by the principle laid down in s. 17 of the First Schedule of the Act, unless he is satisfied that the incapacity of the injured workman is permanent. *SWANNICK v. CONGESTED DISTRICTS BOARD FOR IRELAND*

C. A. (Ir.) [1913] W. C. & Ins. Rep. 96; 6 B. W. C. C. 449

*Weekly payments—Redemption of employer's liability—Optional award—Permanent incapacity—Onus of proof—"May"—Workmen's Compensation Act, 1906 (6 *Edu.* 7, c. 58), *Sched. I.*, clause 17.*

A workman met with an accident within the meaning of the Workmen's Compensation Act, 1906, which, resulted in the loss of his

**WORKMEN'S COMPENSATION (Compensation B—Redemption)—continued.**

left hand. He was awarded 15s. 4d. a week compensation; and the employers subsequently applied for an arbitration for the redemption of this payment. The county court judge held that permanent partial incapacity was proved and awarded that the weekly payments "may be redeemed" on payment by the applicants of 613l., namely, 75 per cent. of thirty years' purchase. The workman appealed against the optional form of the award, and the employers appealed on the ground that the judge was not compelled to award that amount, that the incapacity was not permanent, and that the onus of proving that the incapacity was not permanent was not on them:—

*Held*, that the judge must make an award for a lump sum which could be enforced as a judgment; that the word "may" must be struck out of the award; and that there was evidence on which the judge was justified in finding that there was permanent partial incapacity.

Dictum of Farwell L.J. in *Calico Printers Association v. Hicham* [1912] 1 K. B. 93, 104, that the onus of proving permanent incapacity was on the person alleging it, doubted. *CALICO PRINTERS ASSOCIATION, LD. v. BOOTH* - C. A. [1913] 3 K. B. 652; 82 L. J. (K. B.) 985; [1913] W. C. & Ins. Rep. 540; 109 L. T. 123; 6 B. W. C. C. 551

**Compensation—Review.**

*Agreement*, col. 745.

*Committee, Representative*, col. 746.

*Earning Power*, col. 746.

*Incapacity*, col. 748.

*Medical Assessor*, col. 751.

*Medical Referee*, col. 752.

*Onus of Proof*, col. 753.

*Termination*, col. 753.

**Agreement.**

*Weekly payments—Recorded agreement—Review—Jurisdiction*—"If any question arises"—*Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 3; *Sched. I, clauses 16, 17—Workmen's Compensation Rules, 1907–1911*, rr. 8, 9; *Appendix A, Form 5*.

A workman having met with an accident within the meaning of the *Workmen's Compensation Act, 1906*, an agreement was made between him and his employers whereby they admitted liability and total incapacity and agreed to make him a weekly payment as compensation. They subsequently applied for a review of the weekly payments and asked that they should be terminated on the ground that the incapacity of the workman had ceased. The county court judge held that no question had arisen between the parties when the application was commenced, therefore he had no jurisdiction to entertain it:—

*Held*, that the existence of a dispute be-

**WORKMEN'S COMPENSATION (Compensation—Review)—continued.**

tween the parties was not a condition precedent to an application to review under *Sched. I, cl. 16*. *TYNE & BEES SHIPPING CO., LD. v. WHILLOCK* - C. A. [1913] 3 K. B. 642; 82 L. J. (K. B.) 1091; [1913] W. C. & Ins. Rep. 579; 6 B. W. C. C. 559; 109 L. T. 84; [1913] W. N. 237; 57 S. J. 716

**Committee, Representative.**

*Compensation decided by committee representative of employer and workmen—Notice of objection to committee—Jurisdiction of county court—Workmen's Compensation Act, 1897* (60 & 61 Vict. c. 37), *Sched. I, par. 12; Sched. II, pars. 1, 2*.

*REX v. TEMPLER AND OTHERS; EX PARTE HOWARTH* - C. A. [1912] 2 K. B. 444; 81 L. J. (K. B.) 805; [1912] W. C. Rep. 209; 5 B. W. C. C. 454; 106 L. T. 855; [1912] W. N. 135; 28 T. L. R. 410; 56 S. J. 501

**Earning Power.**

*Agreement—Recording of memorandum—Review of weekly payments—Compensation paid for more than six months under agreement as to weekly payment during total incapacity—Thereafter application made by workman to record memorandum of agreement—Objection by employer and simultaneous application to have weekly payment ended or diminished—Proof allowed—Finding by arbitrator that workman was "fit for some work"—Cause remitted to arbitrator for a definite finding as to the workman's wage-earning capacity—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1 (3); *Sched. I* (16); *Sched. II* (9).

Observations per the Lord President on the meaning of the word "capacity" in the statute. *PETRIE v. SMITH*

[1913] W. C. & Ins. Rep. 378

*Amount of compensation—Workman who had been paid full compensation as for total incapacity partially recovering earning capacity—Workman's earnings plus full amount of compensation forming together a smaller sum than his earnings prior to accident—Arbitrator refusing to reduce compensation—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I* (3).

*Held*, that a prima facie case was made out for reducing compensation. Case remitted to arbitrator in respect that no facts appeared in the case to warrant continuation of full compensation. *A. G. MOORE & CO. v. PRYDE* -

Ct. Sess. [1913] W. C. & Ins. Rep. 100; 6 B. W. C. C. 385

*Earnings—Business carried on by workman on his own account—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), *Sched. I* (16).

Where a labourer partially incapacitated by an accident has since ceased to be an employee and has gone into business as a farmer on his own account, and an application to review the compensation payable is made on the ground that his earnings have increased and his incapacity diminished, the question

**WORKMEN'S COMPENSATION (Compensation—Review)—continued.**

to be considered is what the labourer would reasonably have had to pay an employee in the business he has entered into for doing the work he is doing; and in arriving at a conclusion on that question the arbitrator is entitled to consider the general state of the business of farming in the neighbourhood; and if there is some evidence on which the arbitrator could have acted in coming to his decision, the C. A. will not interfere. **DUBERLY v. MACE - C. A. [1913] W. C. & Ins. Rep. 199; 6 B. W. C. C. 82**

*Loss of eye—Cesser of incapacity—“Suitable employment” — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clauses 3, 16.*

A workman, having lost an eye by accident in the course of his employment of “striker” in an ironfounders’ works, was paid a weekly sum by his employers under a recorded agreement. According to the doctor’s evidence he could do any work which a one-eyed man could do. The man was offered “drilling” or “rough fitting” by his employers at his old wages, which he refused as being too dangerous for him. The county court judge found that the work offered was “suitable employment” within Sched. I., cl. 3, of the Workmen’s Compensation Act, 1906, and made an award of 1*l.* a week, with a declaration of liability:—

*Held*, that the finding of the county court judge justified his award. **HOWARDS v. WHARTON - C. A. [1913] W. C. & Ins. Rep. 504; 6 B. W. C. C. 614**

*Minor—Total incapacity—Compensation being paid at rate fixed by agreement in Jan., 1912—Finding in fact by arbitrator that there had been a general rise in wages of the employment since date of agreement—Finding that it was not proved that workman’s earning capacity exceeded the double of the agreed rate of compensation—Finding that it was not proved that earning capacity of incapacitated workman would have increased between date of agreement and date of application for review—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).*

*Held*, that the proved rise of wages did not per se entitle the claimant to an increase of compensation. **MALCOLM v. THOMAS SPURWART & Co.**

**Ct. Sess. [1913] W. C. & Ins. Rep. 523**

*“Suitable employment” — Workman living with family in Belfast offered work by employers in Dublin—Workmen’s Compensation Act, 1906, Sched. I. (3).*

In June, 1910, a workman’s hand was injured by accident arising out of and in the course of his employment as a carter in Belfast. On Aug. 9, 1911, he was awarded compensation by the acting Recorder of Belfast at the rate of 8*s.* 6*d.* a week. An application for review was heard by the Recorder of Belfast on Feb. 14, 1912, when evidence was given that the workman was improving and could do his old work as carter, and his hand would improve by use, but he was not

**WORKMEN'S COMPENSATION (Compensation—Review)—continued.**

fit for the full work of a carter. His employers, who at the time of the accident carried on business in Belfast, also had an extensive business in Dublin as carriers, and, having discontinued the Belfast branch, they offered the workman suitable work in Dublin at his old rate of wages. Since the accident he had been earning 6*s.* a week at light work, and had only applied for light jobs. The Recorder of Belfast held that it was reasonable under the circumstances that the workman should be asked to go to Dublin, and the employment offered was “suitable employment,” and accordingly reduced the amount of compensation from 8*s.* 6*d.* to one penny per week:—

*Held*, that there was evidence to support the finding. **WALLIS & SONS v. McNEIL - C. A. (Ir.) 6 B. W. C. C. 445**

*Unskilled workman—Capacity to do light work—Burden of proof—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3), (16).*

In the case of an unskilled workman who has suffered an accident which rendered him unable to work and has been awarded a weekly payment on that footing, when the employer, on an application to review the weekly payment adduces evidence shewing that the man has so far recovered as to be able to do light work and offers him such work, the burden is on the workman to shew that a reduction should not be made. It is not necessary for the employer to shew in the case of an unskilled labourer that the man can obtain work in the particular employment in which he was engaged before the accident. **GRAY, DAWES & Co. v. REED - C. A. [1913] W. C. & Ins. Rep. 127; 6 B. W. C. C. 43; 108 L. T. 53**

**Incapacity.**

*Application by employers to terminate weekly payment—No evidence called by workman—Failure of employers to prove recovery of workman—Burden of proof—Workmen’s Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 16*

A miner injured his back as the result of an accident arising out of his employment and received compensation for some time. Ultimately he recovered sufficiently to do light work, and was willing to attempt his full work, but no suitable place could be found for him. While still engaged on the light work he behaved strangely one day when leaving the mine, and the employers came to the conclusion that his mind was in some way affected and that it was not safe for him to go into the mine again. Subsequently they applied to terminate the compensation. The only medical evidence was given by a doctor who had examined the man as to his mental state, but had not examined his back. He said the man had told him he was quite recovered and had no trouble with his back for five or six months. The doctor did not know that during that time the man had only done light work. No evidence was called on behalf of the workman, but it was admitted that the mental state was not the result of the accident:—

**WORKMEN'S COMPENSATION (Compensation—Review)—continued.**

*Held*, that the arbitrator was entitled to hold that the employers had not discharged the onus of proving that the man had entirely recovered from the accident. *NEW MONCKTON COLLIERIES, L.D. v. TOONE* - C. A.

[1913] *W. C. & Ins. Rep. 425*; 6 B. W. C. C. 160; 109 L. T. 374; 57 S. J. 753

*Cessation—Subsequent application to review—No change of circumstances—Insufficiency of evidence.*

*COX v. BRAITHWAITE & KIRK* - C. A. [1913] *W. C. & Ins. Rep. 66*; 5 B. W. C. C. 77; 648

*Conscious malingerer—Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I, clause 16.*

A workman was injured in 1905 and was paid compensation until Jan. 4, 1908, when the compensation was reduced to 1*l.* a week. Subsequently there had been various applications for review, as a result of which the compensation was increased for a time and then reduced again to 1*l.* a week. On Feb. 3, 1913, the workman again applied for a review and increase of the compensation. There was a conflict of medical testimony. The doctors called for the workman were of opinion that the man believed he could not work, with the result that he really could not do so, but said that much of the pain he complained of was hysterical. The doctors on the other side were of opinion that the workman was a conscious malingerer:—

*Held*, that there was evidence to support the finding of the county court judge that the man was a conscious malingerer. *ODGEN v. SOUTH KIRKBY, FEATHERSTONE, AND HEMSWORTH COLLIERIES, LD.* - C. A. [1913]

*W. C. & Ins. Rep. 463*; 6 B. W. C. C. 1

*Partial incapacity—"Able to earn"—Infant workgirl in receipt of compensation for partial incapacity—Employer's application to review and terminate—Offer at the arbitration of suitable light work, at higher than old wages—Judge refuses to reduce compensation—Probable increase of infant's earnings not considered—Workmen's Compensation Act, 1913, Sched. I. (3).*

A girl of seventeen, employed as a machinist at 6*s.* 10*d.* a week, lost the first and part of the second fingers of her left hand by accident. She was voluntarily paid compensation for three months, when she took domestic service at 5*s.* a week, board and lodging, and compensation was stopped. She left service after three weeks' trial as the work was too hard. She applied for compensation to be continued and was awarded 3*s.* a week. The employers applied (fourteen months after the accident) to review and terminate the payments. At the hearing they offered suitable light work at 8*s.* a week, with a possibility of earning 12*s.* The county court judge refused to reduce the amount of compensation, and stated that if the offer of light work had been made earlier the case would have been different. The award in no way purported

**WORKMEN'S COMPENSATION (Compensation—Review)—continued.**

to be founded on the probable increase of earnings under the proviso in Sched. I. (16):—

*Held*, there was no evidence to justify awarding the continuance of 3*s.* a week; compensation should have been stopped and a declaration of liability granted. *CLARKE, NICHOLLS & COOMBS, LD. v. KNOX* - C. A.

6 B. W. C. C. 695; 57 S. J. 793

*Permanent partial incapacity—Reduction in weekly payments—Evidence—Jurisdiction of county court judge—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (3).*

A workman, at first totally incapacitated by an accident for the consequences of which the employers accepted liability, was paid by them half wages for some months, when they sought to reduce the weekly rate of payment on the ground that total incapacity had ceased. The workman applied for arbitration, and was the only witness examined before the county court judge. He proved that he had tried to get employment, and failed; and was admittedly not actually in any employment at the time of his application. He did not, however, give any estimate of what would be the value of his services if employed. No evidence of any kind was adduced by the employers. The county court judge awarded the applicant, until further order, a weekly sum which was equivalent to half the wages he was earning up to the time of the accident:—

*Held*, that the county court judge was within his jurisdiction in making the award, and that it should be affirmed. *OSBORNE v. TRALEE AND DINGLE RY. CO.*

C. A. (Ir.) [1913] 2 I. R. 133; [1913] *W. C. & Ins. Rep. 391*

*Refusal to undergo surgical operation—Where incapacity "results" from the injury—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b).*

A workman accidentally injured in the foot and thereby incapacitated refused to undergo a simple operation which, it was reasonably certain, would have cured him. In so refusing he acted on the advice of his own doctors, who were of opinion that the proposed operation, though devoid of danger, would be useless.

In an application for review of a payment of compensation which he was receiving, *held* that he was precluded by his refusal from claiming a continuance of the compensation. *O'NEILL v. BROWN (JOHN) & CO., LD.*

Ct. Sess. 1913 S. C. 653; [1913] *W. C. & Ins. Rep. 235*; 6 B. W. C. C. 428

*Right of employer to require medical examination of workman—Refusal of workman to submit—Suspension of right to compensation and to take proceedings—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., pars. 4, 14, 15—Regulations of Secretary of State, dated June 28, 1907.*

The right of an employer, under Sched. I., par. 4, of the Workmen's Compensation Act, 1906, to require a workman who has given notice of an accident to submit himself for

**WORKMEN'S COMPENSATION** (Compensation—Review)—*continued.*

medical examination, is not limited to one examination immediately after the accident.

A workman gave notice of an accident and, having been seen by his employers' doctors, received compensation by weekly payments for about three years. The employers then stopped the weekly payments on the ground that there was no longer incapacity to earn wages, and the workman commenced arbitration proceedings claiming compensation under the Act. The employers then required the workman to submit himself for medical examination under Sched. I., par. 4, which he refused to do. The county court judge directed that proceedings in the arbitration should be suspended, until the workman had complied with the requirement of the employers:—

*Held* by the O. A., that there was jurisdiction to make the order. **MAJOR v. SOUTH KIRKBY, FEATHERSTONE AND HUNSWORTH COLLIERIES, LD.** C. A. [1913] 2 K. B. 145; 82 L. J. (K. B.) 452; [1913] W. C. & Ins. Rep. 305; 6 B. W. C. C. 169; 108 L. T. 534; [1913] W. N. 17; 29 T. L. R. 223; 57 S. J. 244

"Workman . . . refuses to submit himself to . . . examination"—*Compensation voluntarily paid, then stopped—Subsequent application by workman—Request for medical examination unreasonably refused—Proceedings suspended—Workmen's Compensation Act, 1906, Sched. I. (4), (14), and (15).*

In July, 1911, an accident occurred, and compensation was voluntarily paid until Sept. 16, 1911. The workman was medically examined on more than one occasion on behalf of the employers during this period. On compensation being stopped, the workman in Sept., 1912, applied for continuation of compensation. The employers requested that he should be medically examined, but he refused. The county court judge found that the refusal was unreasonable, and suspended the proceedings pending examination:—

*Held*, the proceedings were properly suspended.

**Major v. South Kirkby, Featherstone and Hunsworth Collieries, Ltd.** [1913] 2 K. B. 145, followed. **LONGHURST v. S.S. "CLEMENT" (OWNERS OF)** C. A. 6 B. W. C. C. 218; [1913] W. C. & Ins. Rep. 312

*Medical Assessor.*

*Weekly payments—Recovery from effects of accident—Award terminating compensation—Medical assessor—Examination of workman—Absence of objection—Evidence to support finding—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16); Sched. II. (5).*

A carter was knocked down by two horses and injured, and received compensation under a recorded agreement. On Nov. 28, 1912, his employer applied to have the compensation terminated. At the hearing before the county court judge, who was assisted by a medical assessor, there was a great difference of

**WORKMEN'S COMPENSATION** (Compensation—Review)—*continued.*

medical opinion as to whether the man was still suffering from the result of the accident. The medical assessor examined the workman by the judge's direction and the judge stated that he adopted the view which the assessor advised and came to the conclusion that the effects of the accident had ceased by the date of the application to review:—

*Held*, that there was evidence to support this finding.

As at the time no objection was taken on behalf of the workman to his being examined by the assessor, the Court refused to decide the question whether the medical assessor would have had any right to examine the workman without his consent. **SMITH v. FOSTER - C. A.** [1913] W. C. & Ins. Rep. 420; 6 B. W. C. C. 499

*Medical Referee.*

*Incapacity for work—Wage-earning capacity—Report by medical referee of fitness for work—Finality of medical referee's report—Competency of further inquiry into wage-earning capacity—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (h), (3), (15).*

By agreement between a coal miner, who had received an injury to his thumb and was receiving compensation, and his employers the question of the workman's capacity to resume his former employment was referred to a medical referee under par. 15 of Sched. I. to the Workmen's Compensation Act. The medical referee reported that the workman was "quite fit to resume his ordinary employment as a coal miner, having recovered from" the injury. The employers thereupon applied to have the compensation ended, when the workman lodged answers in which he averred that having returned to work he had ascertained "that his earning ability had been considerably reduced from the effects of his injury," and maintained that he was still entitled to partial compensation. The arbitrator having ended the compensation, the workman appealed and craved leave to lead evidence in support of his averments.

The Court dismissed the appeal, holding that, as the medical referee's report was final, and was from its terms conclusive as to the question raised by the workman's averments, proof of these averments was inadmissible.

**Bull v. William Hunt & Sons, Ltd.** [1912] A. C. 496 and **Duris v. Wilsons and Clyde Coal Co., Ltd.** [1912] A. C. 513, distinguished; and observed that where a medical referee's report is not from its terms conclusive, a proof may be admissible.

*Question whether a proof might not have been admissible, if the workman had averred that, owing to the consequences of the accident, he had been unable to obtain employment.* **GRAY v. SHOTTS IRON CO., LD.** Ct. Sess. 1912 S. C. 1267; 6 B. W. C. C. 287

*Report that workman "ought now to be fit to resume his ordinary work"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (15), (16).*

*Held*, that, although the report of the medical referee was conclusive as to the work-

# WORKMEN'S COMPENSATION (Compensation—Review)—continued.

man's physical condition, the workman was entitled to a proof relating to his wage-earning capacity.

*Arnott v. Fife Coal Co.*, 1911 S. C. 1029, followed. Form of interlocutor in *Arnott v. Fife Coal Co.* (supra) disapproved and altered. *CLUDEN v. WEMYSS COAL CO.*

Ct. Sess. [1913] W. C. & Ins. Rep. 188 ;  
6 B. W. C. C. 393

See below, Medical Referee.

## Onus of Proof.

*Industrial disease—Employers proving complete recovery of workman from attack of nystagmus—Workman proving susceptibility to recurrence of disease—No evidence that susceptibility was due to original attack—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).*

Held, that the onus on the employers was discharged by proof of complete recovery from the disease, and that the onus was then on the workman to prove that the susceptibility to recurrence was due to the original attack. *DARROLL v. GLASGOW IRON AND STEEL CO.*

Ct. Sess. [1913] W. C. & Ins. Rep. 80 ;  
6 B. W. C. C. 354

## Termination.

*Cessation of incapacity—Order terminating weekly payments—Discretion of arbitrator.*

*WHEELER, RIDLEY & CO. v. DAWSON*

C. A. [1913] W. C. & Ins. Rep. 59 ; 5  
B. W. C. C. 645

*Cesser of incapacity for work—Ending of weekly payment—Suspensory award unnecessary—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, Sched. I. (16).*

Where at the hearing, on Nov. 19, 1912, of an application to review and terminate the weekly payments, payable under a recorded agreement to a girl employed as a farm labourer who had broken her arm on Sept. 6, 1911, and had been receiving 10s. a week since the time of the accident, evidence was given by one doctor that, on examination before the hearing, he found the arm quite well save for a wasting of muscles due to want of exercise, and that this would at any time be remedied by exercising the arm, whereas the doctor examined on behalf of the girl expressed the opinion that she was still incapacitated from farm work :—

Held, that there was evidence to support a finding by the county court judge that the girl's arm was quite recovered and that the county court judge was right in terminating the payment and in refusing to make a suspensory award.

*Wheeler, Ridley & Co. v. Dawson*, [1911] W. C. & Ins. Rep. 59, followed. *SIMPSON v. BYRNE* - C. A. (Ir.) [1913] W. C. & Ins. Rep. 240 ; 6 B. W. C. C. 455

*Refusal to work—Doctor's advice followed—Reasonable—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.*

A workman having met with an accident

# WORKMEN'S COMPENSATION (Compensation—Review)—continued.

in the course of his employment, his employers agreed to make him weekly payments by way of compensation. Subsequently they applied under the Workmen's Compensation Act, 1906, for the diminution or termination of the compensation on the ground that he had sufficiently recovered to do suitable work and that he had refused to do it. It appeared that his refusal was based on his doctor's advice, but the medical evidence before the county court judge as to his capacity for work was conflicting. The judge held that, acting on unwise medical advice and the domination of his wife, the workman had behaved in an unreasonable way, although he was not a malingerer ; and he terminated the agreement for compensation :—

Held, on the findings of fact, that the workman's present condition was not the result of the accident ; that he might be acting unreasonably although he was following the advice of his doctor ; and that an appeal from the judge must be dismissed.

*Per Cozens-Hardy M.R.* : The weekly payments ought to be reduced to 1d. per week and not terminated altogether. *HIGGS & HILL, LD. v. UNICOME* - C. A. [1913] 1 K. B. 595 ; 82 L. J. (K. B.) 369 ; [1913] W. C. & Ins. Rep. 263 ; 6 B. W. C. C. 205 ; 103 L. T. 169 ; [1913] W. N. 36

*Wage-earning capacity—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (b), (3)—Incapacity for work.*

A miner, who had lost one eye by an accident and who had been given work above ground and was receiving partial compensation, was examined by a medical referee, who reported that he was "as fit as any other one-eyed man to resume his work underground." The employers having applied to have the compensation ended, the arbitrator, after a proof, found that the miner had made various applications for work underground without success, and that he "is presently working on the surface and is only able on account of his injuries to earn 18s. a week," and dismissed the application.

In an appeal the Court refused to disturb the arbitrator's finding.

*ARNOTT v. FIFE COAL CO., LD.* - Ct. Sess. 1912 S. C. 1262 ; 6 B. W. C. C. 281

## Contracting-out Scheme.

*Scheme of compensation—Re-certification—Ballot—Jurisdiction of county court judge—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 3, sub-s. 1 ; s. 15, sub-ss. 2, 3.*

A scheme of compensation under the Workmen's Compensation Act, 1906, is not void because it purports to oust the jurisdiction of the arbitrator under the Act, and a workman who has agreed to accept the provisions of a duly certified scheme cannot resort to any of the provisions of the Act.

*Horn v. Lords Comrs. of the Admiralty* [1911] 1 K. B. 24, followed.

On re-certification under s. 15 of the Workmen's Compensation Act, 1906, of a scheme of

**WORKMEN'S COMPENSATION (Contracting-Out Scheme)—continued.**

compensation which has been certified under the Workmen's Compensation Act, 1897, it is not necessary that a ballot of the workmen shall be taken before the registrar can recertify.

Decision of the C. A. [1912] 2 K. B. 26, affirmed. *GODWIN v. LORDS COMMISSIONERS OF THE ADMIRALTY* - H. L. (E.) [1913] A. C. 638; 82 L. J. (K. B.) 1126; 109 L. T. 428; [1913] W. N. 267; 29 T. L. R. 774

*Scheme of compensation under Workmen's Compensation Act, 1897—Accident during currency of scheme—Termination of scheme by non-certification under Workmen's Compensation Act, 1906—Limit of employer's liability—Revival of workman's rights under the Act—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), s. 3—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 15.*

Where a workman had accepted a scheme of compensation duly certified under s. 3 of the Workmen's Compensation Act, 1897, and had met with an accident in the course of his employment, in respect of which he received weekly payments from 1901 to 1912, when the funds of the society were exhausted, the scheme having been terminated in consequence of not being recertified under the Workmen's Compensation Act, 1906:—

*Held*, that the workman, having accepted the scheme, was outside the provisions of the Act altogether, and could not successfully claim compensation thereunder.

*Horn v. Lords Commsrs. of the Admiralty* [1911] 1 K. B. 24, followed.

Observations of Fletcher Moulton L.J. in *Godwin v. Lords Commsrs. of the Admiralty* [1912] 2 K. B. 26, distinguished. *HOWARTH v. A. KNOWLES & SONS, LD.*

C. A. [1913] 3 K. B. 675; 82 L. J. (K. B.) 1325; 6 B. W. C. C. 596; 109 L. T. 278; [1913] W. N. 237; 29 T. L. R. 667; 57 S. J. 471

**Costs.**

*Appeal—Withdrawal—Application to respondent to consent—Refusal—Application to Court.*

An appeal from an award of a county court judge under the Workmen's Compensation Act, 1906, was set down by the employers. Some time before the appeal would have come on for hearing the appellants asked the respondent to consent to its withdrawal upon payment of the respondent's taxed costs. The respondent refused to give such consent. On an application to the Court by the appellants for leave to withdraw the appeal:—

*Held*, that leave should be given, and that as the respondent should have consented to the withdrawal of the appeal when asked to do so, he must pay the costs of the application for leave and receive only his costs of the appeal up to the time when he was asked to give his consent. *STEPHENS v. VICKERS, LD.*

C. A. [1913] W. C. & Ins. Rep. 454; 6 B. W. C. C. 468

*Costs of appeal—Costs of arbitration—Set-off—Jurisdiction.*

**WORKMEN'S COMPENSATION (Costs)—contd.**

The C. A. cannot, after judgment has been given specifically dealing with costs, alter their judgment by ordering that the costs of the appeal shall be costs in an arbitration in the county court under the Workmen's Compensation Act, 1906, so as to enable the appeal costs to be set off against costs in the arbitration. *BARNETT v. PORT OF LONDON AUTHORITY* (No. 2) - C. A. 82 L. J. (K. B.) 918; [1913] W. C. & Ins. Rep. 414; 6 B. W. C. C. 565; 108 L. T. 944

*Employer successful on sole issue tried—Suspensory order made—Employer ordered to pay costs—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (7).*

A workgirl was in receipt of compensation for an injury by accident arising out of and in the course of her employment. After a time the employers stopped payment, alleging that the effects of the accident had passed off, and offered the girl her old work at her old wages. She refused and claimed compensation for total incapacity. The employers only traversed "total incapacity." The county court judge held there was not "total incapacity," but awarded her 1*l.* a week and made a declaration of liability. He also awarded her costs of the arbitration. On appeal by the employers against the order to pay costs:—

*Held*, that the only issue tried was "total incapacity," and that as the employers had succeeded on that issue, they could not be ordered to pay the costs. *SNELL v. GROSS, SHERWOOD & HEALD, LD.* - C. A. [1913] W. C. & Ins. Rep. 141; 6 B. W. C. C. 242

*Order for successful litigant to pay costs—Limits of county court judge's discretion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (16).*

In their answer to an application for compensation the employers alleged that they had offered the workman light work and offered to submit to an award as from that date of 2*s.* 1*½d.* a week, being 50 per cent. of the difference between the amount he was earning before the accident and the amount he could earn at the light work, and they paid the arrears of compensation on that footing into Court. The county court judge held that the workman ought to have accepted the light work, and awarded compensation at the rate of 2*s.* 10*d.* a week, with arrears at that rate, and ordered the workman to pay the employers' costs as from the date of the payment into Court. The employers alleged that what happened at the hearing was that, a year having elapsed since the date of the accident, the county court judge arranged, with the consent of the parties, to deal on that application with the further question whether the workman, who was a minor, was entitled to an increase of compensation under Sched. I., clause 16, of the Workmen's Compensation Act, 1906, because he would by then have been earning an increased wage but for his injuries; and they said that the increase of the award from 2*s.* 1*½d.* to 2*s.* 10*d.* a week

**WORKMEN'S COMPENSATION (Costs)—cont'd.**

was accounted for in that way. This was denied by the workman, and if it was true, the award had not been correctly drawn up:—

*Held*, that the case must be referred to the county court judge to make such order as to costs as he in his discretion and within the limits of his discretion should think fit; and that as the employers had failed to apply to have the award corrected, and had not protested against the appeal, when they first received notice of it, they must bear the costs of the appeal. **WILLIAMS v. CAEPONTHREN COLLIERY Co.** - C. A. [1913] W. C. & Ins. Rep. 155; 6 B. W. C. C. 122

*Security for costs of appeal—Granted on proof of no means.*

The respondent to an appeal is entitled to an order for security on satisfying the Court that the appellant would not be in a position to pay the costs, if his appeal should be dismissed. **BRINE v. MAY, ELLIS, GRACE & Co.** C. A. 6 B. W. C. C. 460

*Successful party ordered to pay costs—County court judge—Jurisdiction—Judicial exercise of discretion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II. (7), (9) (a)—Workmen's Compensation Rules, r. 49 (8).*

A workman who was in receipt of a weekly payment of 18s. 5d. from his employers as compensation for an accident within the meaning of the Workmen's Compensation Act, 1906, entered into an agreement to accept 100l. in satisfaction of the employers' liability. The workman applied to the registrar to have a memorandum of the agreement recorded. The registrar, being dissatisfied as to the amount of the commutation, referred the matter to the judge. Both parties appeared and supported the agreement. The judge overruled the objection as to quantum, and directed the memorandum to be recorded, ordering the employers to pay the costs. The employers appealed from the order as to costs:—

*Held*, assuming that the county court judge had a discretion as to costs, it was not a judicial exercise of that discretion to order a party who had been completely successful and against whom no misconduct was alleged to pay the costs of the proceedings. **KIERSON v. JOSEPH L. THOMPSON & SONS, LD.**

C. A. [1913] 1 K. B. 587; 82 L. J. (K. B.) 920; [1913] W. C. & Ins. Rep. 140; 6 B. W. C. C. 60; 108 L. T. 236; [1913] W. N. 12; 29 T. L. R. 205; 57 S. J. 226

**Death.**

See also **Accident—Injury.**

**Dependants.**

*Alien*, col. 757.

*Desertion*, col. 758.

*Posthumous Illegitimate Child*, col. 759.

*Total or Partial Dependency*, col. 759.

**Alien.**

*Death by accident—Non-resident alien dependant—Statutory compensation—Extra-terri-*

**WORKMEN'S COMPENSATION (Dependants)**

*—continued.*

*territoriality of statute—Workmen's Compensation Act (1902) British Columbia Rev. Stat. 2 Geo. 5, c. 244, Sched. II., s. 8.*

**KRZUS v. CROW'S NEST PASS COAL CO.**

P. C. [1912] A. C. 590; 81 L. J. (P. C.) 227;

[1913] W. C. & Ins. Rep. 38; 6 B. W. C. C.

270; 107 L. T. 77; 28 T. L. R. 488;

56 S. J. 632

**Desertion.**

*Desertion by father—Decree for aliment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

In Mar., 1907, a workman deserted his wife and children. Up to 1909 he occasionally made small payments to his wife and two younger children, amounting in all to 2l., which was applied towards the support of the family. The payments then ceased, and in Sept., 1909, the wife obtained a decree against him for aliment of the two younger children who were in pupillarity and recovered 17s. from his employers by arrestment used on the decree. The workman then disappeared to avoid further diligence and was not traced until his death in April, 1911, by accident arising out of and in the course of his employment. The wages due to him on his death were paid to his wife. From the date of his desertion the wife and family were supported almost entirely from the earnings of the two elder children. These contributions were not made ex pietate and could have been recovered under the decree for aliment. The widow claimed compensation under the Workmen's Compensation Act, 1906, on behalf of her two pupil children:—

*Held*, that there was evidence upon which the arbitrator could find that these children were wholly dependent on the earnings of their father.

Interlocutor of the Second Division of the Ct. of Sess. in Scotland, 1912 S. C. 644, reversed.

*New Monckton Collieries, Ltd. v. Keeling* [1911] A. C. 648, distinguished. **PORTS OR YOUNG v. NIDDRIE AND BENHAR COAL CO., LD.**

H. L. (Sc.) [1913] A. C. 531; 82 L. J. (P. C.)

147; [1913] W. C. & Ins. Rep. 547; 109

L. T. 568; [1913] W. N. 206; 57

S. J. 685; 29 T. L. R. 626

*Workman deserting pupil children for three years and contributing nothing to their support during that time—Workman thereafter making an arrangement to contribute from his earnings, but drowned at sea before date of first payment—Finding by arbitrator that the children were not dependants—Ambiguity in stated case as to whether the arbitrator had treated the question as a pure question of fact or had proceeded upon a supposed presumption of law—Cause remitted to arbitrator to reconsider his judgment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (a), (i.), and (ii.).*

Observations, per the Lord President, on the effect of the question of dependency of a legal obligation to support. *New Monckton*



**WORKMEN'S COMPENSATION (Dependants)***—continued.*

*Colleries, Ltd. v. Keeling* [1911] A. C. 648, followed. *DOBBIE v. EGYPT AND LEVANT STEAMSHIP CO.* - Ct. Sess. [1913] W. C. & Ins. Rep. 75; 6 B. W. C. C. 348

*Posthumous Illegitimate Child.*

*Evidence—Promise to marry—Intention to maintain—Statements against pecuniary interest—Knowledge—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13; Sched. I. (a).*

On a claim under the Workmen's Compensation Act, 1906, by a posthumous illegitimate child against the employers of a deceased workman, alleged to have been its father, for compensation as a dependant of the workman, the burden of proof of dependency is on the applicant, and evidence of statements by the deceased to the effect that he promised to marry the mother, that he intended to marry and make a home for her, that he admitted the paternity, and that he intended to maintain the child, are not declarations by a deceased person against his pecuniary interest and are not admissible as evidence to prove dependency. *WARD v. H. S. PITT & CO. LLOYD v. POWELL DUFFRYN STEAM COAL CO.*

C. A. [1913] 2 K. B. 130; 82 L. J. (K. B.) 533; [1913] W. C. & Ins. Rep. 355; 6 B. W. C. C. 142; 108 L. T. 201; [1913] W. N. 51; 29 T. L. R. 291; 57 S. J. 301

*Total or Partial Dependency.*

*Maximum award—Judicial discretion—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, clause 1 (a).*

A county court judge's award will not be set aside on a mere question of quantum, unless he has misdirected himself or failed to make a proper exercise of his judicial discretion. Thus where a county court judge awarded the maximum sum of 300*l.* to a deceased workman's crippled sister, who had only been dependent on the workman in his lifetime to the extent of 7*s.* 6*d.* a week, the Court refused to set aside the award. *CHEVERTON v. OCEANIC STEAM NAVIGATION CO.* - C. A. [1913]

W. C. & Ins. Rep. 462; 6 B. W. C. C. 574

*Question of fact for arbitrator—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I. (1) (a).*

The county court judge awarded a dependant 300*l.* compensation without finding whether the dependant was totally or partially dependent:—

*Held*, the case must be remitted for this to be found. *CHEVERTON v. OCEANIC STEAM NAVIGATION CO., LD.* C. A. 6 B. W. C. C. 253; 29 T. L. R. 658

*Wife living with husband—Earnings of husband not sufficient for their support—Both wage earners—Wife unable to earn anything for three months before husband's death—Evidence of dependency—Misdirection—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

A husband and wife were living together until his death as the result of an accident in the course of his employment. The husband

**WORKMEN'S COMPENSATION (Dependants)***—continued.*

only earned a few shillings a week, while up to some three or four months before his death the wife had been earning 1*s.* a week for cooking, besides earning a few shillings for sewing. Some three or four months before his death the wife injured her hand, and since then she had been unable to earn anything. The county court judge held that the wife was in no degree dependent on her husband during the last year or two of his wife, and refused to award her compensation:—

*Held* by the C. A., that the county court judge had misdirected himself and that there must be a new trial. *SMITH v. COPE*

C. A. [1913] W. C. & Ins. Rep. 460; 6 B. W. C. C. 569

*Disease.*

*See above, Accident Arising, &c., and Industrial Disease.*

*Evidence.*

*See Accident—Evidence, and Dependants.*

*Statements by Deceased.*

*Inadmissibility—Evidence rejected by county court judge but allowed to be given—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).*

On an application by the dependants of a deceased man for compensation, the county court judge held that evidence of statements by the deceased as to the cause of his injury was not admissible, but allowed the evidence to be given in case he was wrong, saying that his judgment would be independent of that evidence:—

*Held*, that as the C. A. had previously laid down in the most definite manner that such evidence was not admissible, the county court judge ought not to have allowed it to be given.

*Held*, further, that the evidence had coloured the whole decision, and that there must therefore be a new trial before a different county court judge. *SMITH v. HARDMAN & HOLDEN, LD.* - C. A. [1913] W. C. & Ins. Rep. 459; 6 B. W. C. C. 719

*Incapacity.*

*See above, Accident, Injury, and Compensation—Review.*

*Indemnity.*

*Damage, col. 760.*

*Negligence of Stranger, col. 761.*

*Notice of Claim, col. 762.*

*Damage.*

*Personal injury—Shock—British ship—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 7—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 6 & 7.*

*THE "RIGEL"*

*Bargrave Deane, J.* [1912] P. 99; 81 L. J. (P.) 86; 12 Asp. Mar. Law Cas. 192; 106 L. T. 648; [1912] W. N. 56; 28 T. L. R. 251

**WORKMEN'S COMPENSATION (Indemnity)—**  
*continued.**Negligence of Stranger.*

*Findings of fact—Payment of compensation by employer—Third-party notice—Liability to indemnify employer—Contributory negligence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.*

Where an employer has called upon a third person to indemnify him under s. 6 of the Workmen's Compensation Act, 1906, against his liability to pay compensation in respect of an accident to a workman in his employ, and the parties consent to all questions as to the right to such indemnity being settled by arbitration under the Act, the findings of fact by the county court judge that the accident was due to the third party's negligence, and that there was no contributory negligence on the part of the workman such as would disentitle him to recover damages from the third party, are conclusive if there is any evidence, however slight, to support these findings.

*Dublin, Wicklow, and Wexford Ry. v. Slatery* (1878) 3 App. Cas. 1155, and *Davey v. London and South Western Ry.* (1833) 12 Q. B. D. 70, discussed. *CUTSFORTH v. JOHN-SON* (NORTH EASTERN RY., THIRD PARTIES) C. A. [1913] W. C. & Ins. Rep. 131; 6 B. W. C. C. 28; 108 L. T. 138

*Remedy both against employer and stranger—Award against employer—Right of indemnity against third party—Damage from kick of horse—Liability of owner—Scienter—Injury by accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.*

In the course of his employment a workman was killed by the kick of a horse belonging, not to his employers, but to third parties, by whose servant it was brought upon the employers' premises and left there unattended. Upon a claim by the dependants of the workman for compensation under the Workmen's Compensation Act, 1906, the employers admitted liability, but claimed contribution against the third parties under s. 6 of the Act. The county court judge held that the question of scienter on the part of the owners of the horse was immaterial, that the bringing of the horse upon the employers' premises was a trespass, and by reason of negligently leaving it there unattended they were liable to indemnify the employers:—

*Held*, on appeal, that the case was covered by *Cox v. Burbridge* (1863) 13 C. B. (N. S.) 430. It was not in the ordinary course of things that a horse not known to be vicious should kick a man. Assuming trespass, the damage in the present case did not naturally flow from it; it was too remote. The injury to the deceased was not sufficiently connected with the trespass or negligence to be the natural or probable consequence of it. The award against the third parties was therefore wrong. *BRADLEY v. WALLACES, LD.*; *THOMPSON, McKAY & Co., THIRD PARTIES*

C. A. [1913] 3 K. B. 629; 82 L. J. (K. B.) 1074; 6 B. W. C. C. 406; 109 L. T. 281; [1913] W. N. 239; 29 T. L. R. 705

**WORKMEN'S COMPENSATION (Indemnity)—**  
*continued.**Notice of Claim.*

*Action for indemnity by employer against third party—Workmen's Compensation Rules, 1907, rr. 19, 24—Omission to serve notice of claim—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.*

Where a workman has recovered compensation under the Workmen's Compensation Act, 1906, from his employer in respect of an accident which was caused by the negligence of a third party, it is not a condition precedent to the employer's right to maintain an action for indemnity against the third party under s. 6 of that Act that he should have filed and served on the third party a formal notice of his claim under r. 24 of the Workmen's Compensation Rules, 1907.

Decision of Phillimore J. [1913] 1 K. B. 113, affirmed. *NETTLEINGHAM & Co., LD. v. POWELL & Co.* C. A. [1913] 3 K. B. 209; 82 L. J. (K. B.) 911; [1913] W. C. & Ins. Rep. 424; 6 B. W. C. C. 479; 108 L. T. 912; [1913] W. N. 182; 29 T. L. R. 578; 57 S. J. 593

*Industrial Disease.*

*Certificate of disablement—Certifying surgeon—Refusal to give certificate—Appeal to medical referee—Jurisdiction—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8.*

By s. 8, sub-s. 1 (iii.) (f), of the Workmen's Compensation Act, 1906, if an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement of a workman by an industrial disease within the Act, the matter shall be referred to a medical referee, whose decision shall be final. Where the certifying surgeon had given a certificate that a workman was suffering from an industrial disease, but in the certificate fixed the commencement of the disablement at a date which, under the circumstances of the case, precluded the workman from taking proceedings for compensation under the Act:—

*Held*, that the workman was "aggrieved" by the refusal of the surgeon to give a certificate within sub-s. (f), and that the workman had a right of appeal to the medical referee. *BIRKS v. STAFFORD COAL AND IRON CO.*

C. A. [1913] 3 K. B. 686; 82 L. J. (K. B.) 1134; 6 B. W. C. C. 617; 109 L. T. 290; [1913] W. N. 238; 57 S. J. 729

*Increased susceptibility—Nystagmus—Liability to recurrence—Loss of employment—"Sequelæ"—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8.*

*GARNANT ANTHRACITE COLLIERIES, LD. v. REES* C. A. [1912] 3 K. B. 372; 81 L. J. (K. B.) 1189; 5 B. W. C. C. 694; 107 L. T. 279

*Injury.*

*See above, Accident—Injury.*

*Medical Examination.*

*See above, Compensation—Review.*

**WORKMEN'S COMPENSATION—continued.****Medical Referee.**

See above, **Accident—Injury—Compensation—Review.**

*Medical referee . . . shall give a certificate*—*Certificate ambiguous—Explanation from referee—Workmen's Compensation Act, 1906, Sched. I. (15).*

An arbitrator is entitled to send back to the medical referee for explanation a certificate which is ambiguous. *KENNEDY v. WILLIAM DIXON, LD.* - Ct. Sess. [1913] W. C. & Ins. Rep. 333; 6 B. W. C. C. 434

**New Trial.**

A case remitted for new trial on the ground that it had not been satisfactorily dealt with at the arbitration in the county court. *SILK v. ISLE OF THANET R. D. C.* - C. A. 6 B. W. C. C. 539

**Notice of Accident.**

See above, **Accident—Notice.**

**Remedies.**

*Action, col. 763.*

*Insurers, col. 765.*

*Principal and Contractor, col. 765.*

**Action.**

*Accident causing death—Compensation paid to dependants of deceased—Subsequent claim by widow under Lord Campbell's Act—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 1, 13.*

The Workmen's Compensation Act, 1906, s. 1, sub-s. 1, provides that "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation in accordance with the First Schedule of this Act."

Sub-s. 2 (b) provides that "When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid."

Sect. 13 provides that "Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable."

A workman who was killed as the result of an accident arising out of and in the course of his employment left a widow and six children

**WORKMEN'S COMPENSATION (Remedies)—continued.**

dependent on him. A claim having been made upon his employers under the Workmen's Compensation Act, 1906, they paid into Court the maximum amount for which they could be held liable under the Act, with an admission of liability. The sum so paid in was invested for the benefit of the children of the deceased with the knowledge and consent of the widow, who made no claim under the Act.

Subsequently the widow brought an action against the employers claiming damages under Lord Campbell's Act:—

*Held*, that the action was not maintainable by virtue of the provisions of s. 1, sub-s. 2 (b), of the Workmen's Compensation Act, 1906. *CODLING v. JOHN MOWLEM & Co.* - *Atkin J.*  
103 L. T. 1033; 29 T. R. 619

*Workman also carrying on occupation of farmer—Injury to workman caused by negligence of third party—Recovery by workman of compensation from employer—Whether damages recoverable by workman in capacity of farmer from third party—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.*

By s. 6 of the Workmen's Compensation Act, 1906, "Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

"(1.) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation."

A workman employed by a colliery co. also carried on the occupation of farming a small farm. Whilst acting in his employment by the colliery co. he was injured by the negligence of the servants of the defts., the London and North Western Ry. Co., in shunting a train. He made a claim for compensation from the colliery co. and received from it thirty-four weekly payments knowing and appreciating that he was receiving compensation under the Workmen's Compensation Act, 1906. He subsequently brought an action against the defts. to recover damages for the injuries caused by the negligence of the defts.' servants. At the trial the jury gave a verdict for the plt. for 275*l.* as damages, of which amount they found that 100*l.* was in respect of the damages which he had suffered as a farmer. For the purposes of the case it was assumed that his earnings as a farmer could not be included in his claim for compensation from his employers:—

*Held*, (1.) that in the circumstances the plt. had "recovered" compensation from the plt. employers under the Act of 1906; (2.) that having recovered compensation from his employers he was not entitled to recover the 100*l.* damages from the defts. *WOODCOCK v. LONDON AND NORTH WESTERN RY. CO.* *Rowlatt J.* [1913] 3 K. B. 139; 82 L. J. (K. B.) 921; [1913] W. C. & Ins. Rep. 563; 6 B. W. C. C. 471; 109 L. T. 253; [1913] W. N. 179; 29 T. L. R. 566

**WORKMEN'S COMPENSATION (Remedies)—***continued.***Insurers.**

*Company — Winding-up — Insurance — Liability of insurers — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 5.*

A colliery co. were members of the respondent co. and as such members were entitled to an indemnity against all proceedings, costs, damages, claims, and demands in respect of compensation resulting from any accident to their workmen. By the articles of association, "Whenever a member's protection has been determined . . . he shall not be entitled to any indemnity in respect of any accident." The colliery co. made default in payment of a call, and the respondent co. removed their name from the list of protected mines and works. The colliery co. was afterwards wound up. The respondent co. had become liable to pay an indemnity to the colliery co. in respect of an accident to the appellant, one of their workmen, which occurred while the colliery co. were still members of the respondent co. :—

*Held*, that the clause in the articles of association referred to accidents happening after the protection had been determined, not to accidents which had happened while it was existing, and that on the winding-up of the colliery co. the respondent co. were liable to pay compensation to the appellant under s. 5 of the Workmen's Compensation Act, 1906.

Judgment of the C. A. [1913] W. C. & Ins. Rep. 1, reversed. *DAFF v. MIDLAND COLLIERY OWNERS' MUTUAL INDEMNITY CO.*

H. L. (E.), 82 L. J. (K. B.) 1840; 109 L. T. 418; [1913] W. N. 256; 29 L. R. 730; 57 S. J. 773

**Principal and Contractor.**

*Obligation on applicant to elect which is sought to be made liable for compensation — Award against one, though partly fruitless, a bar to proceedings under the Act against the other — Notice of accident — Claim — Delay — Excuse — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 4.*

MEIER v. DUBLIN CORPORATION - C. A. (Ir.) [1912] 2 I. R. 129; [1913] W. C. & Ins. Rep. 30; 6 B. W. C. C. 441

**Seaman.**

See above, Accident, and below, Workman.

*Release under s. 136 of the Merchant Shipping Act, 1894 — Effect upon claim under the Workmen's Compensation Act, 1906 — Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 136, 137, 138 — Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 60.*

Where a seaman on taking his discharge at the termination of a voyage signs a release, under s. 136 of the Merchant Shipping Act, 1894, "of all claims in respect of the past voyage," without reserving any claim under s. 60 of the Merchant Shipping Act, 1906, he is not thereby debarred from afterwards claiming from his employers, the shipowners, com-

**WORKMEN'S COMPENSATION (Seaman)—***continued.*

pensation under the Workmen's Compensation Act, 1906, in respect of injury by an accident which occurred during the voyage, but did not result in his incapacity for work until after the termination of the voyage. *BULS v. OWNERS OF SHIP TEUTONIC*

C. A. [1913] 3 K. B. 695; 82 L. J. (K. B.) 1831; 6 B. W. C. C. 653; 100 L. T. 127; [1913] W. N. 238; 29 T. L. R. 675

**Shipping.**

See above, Indemnity and Seaman, and below, Workman.

**Sub-contracting.**

*"In the course of or for the purposes of . . . trade or business" — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 4, sub-s. 1.*

The respondent was a surveyor and estate agent, and having been employed to let a house he finally leased it for his own private residence. The owners found money for doing the decorations and outside repairs, and agreed that the respondent should supervise the work. He contracted with a bricklayer to do the outside work, and one of the bricklayer's men was injured while doing the work :—

*Held*, that the respondent did not enter into the contract "in the course of or for the purposes of his trade or business" within the meaning of s. 4, sub-s. 1, of the Workmen's Compensation Act, 1906, and that he was not liable, therefore, to pay the workman compensation in respect of his injuries. *BRINE v. MAY, ELLIS, GRACE & Co.* - C. A. [1913] W. C. & Ins. Rep. 148; 6 B. W. C. C. 134

*Shipowners — Boiler scaling — "Purposes of trade or business" — Liability to contractor's workman — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 4, sub-s. 1.*

The work of boiler scaling on a ship undertaken by a contractor for the owners of the ship is not work "in the course of or for the purposes of his trade or business" of the shipowners, and they will not be liable as principals under s. 4, sub-s. 1, of the Workmen's Compensation Act, 1906, to pay compensation to a workman employed by the contractor for an accident sustained by him in the course of such work.

*Spiers v. Elderslie Steamship Co.*, 1909 S. C. 1259, followed. *LUCKWILL v. AUCHEN STEAM SHIPPING CO.*

C. A. [1913] W. C. & Ins. Rep. 167; 12 Asp. Mar. Law Cas. 286; 6 B. W. C. C. 51; 108 L. T. 52

*"Work undertaken by the principal" — "In the course of or for the purposes of . . . trade or business" — Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 4, sub-s. 1.*

A barge owner contracted with the captain of one of his barges, to do the annual overhauling of it, and the captain employed the mate to help him and paid the mate a portion of the daily sum he received from the barge owner under the contract. The mate was injured while doing this work :—

**WORKMEN'S COMPENSATION (Sub-contracting)—continued.**

*Held*, that the contract was not entered into by the barge owner "in the course of or for the purposes of his trade or business" in relation to work "undertaken" by him within the meaning of s. 4, sub-s. 1, of the Workmen's Compensation Act, 1906. *HAYES v. S. J. THOMPSON & Co.* - - C. A. [1913] W. C. & Ins. Rep. 161; 6 B. W. C. C. 130

**Workmen.**

*Casual Work*, col. 767.

*Co-adventurer*, col. 768.

*Independent Contractor*, col. 769.

*Share of Profits*, col. 772.

*Volunteer*, col. 773.

**Casual Work.**

"Contract of service"—Owner of horse and car drawing stones—Engaged by the day—Workmen's Compensation Act, 1906 (6 *Educ.* 7, c. 58), s. 13.

The applicant was employed by the road overseer of the county council to draw stones from a quarry, and used for the purpose a horse and car belonging to his father. His wages were to be at the rate of 5s. a day. There was some evidence of control on the part of an overseer or ganger of the county council. There was evidence that he was to get work a day now and again, when there would be work to do, and there was no objection to his working for some one else, when he was not wanted badly by the county council:—

*Held*, that the applicant was a "workman" within the meaning of s. 13 of the Workmen's Compensation Act, 1906, and entitled to compensation for injury by accident arising out of and in the course of his employment.

*Egan v. Tipperary C. C.*, 46 Ir. L. T. R. 69, distinguished. *O'DONNELL v. CLARE C. C.* C. A. (Ir.) [1913] W. C. & Ins. Rep. 273; 6 B. W. C. C. 457

*Employment for particular job—Workmen's Compensation Act*, 1906 (6 *Educ.* 7, c. 58), s. 13.

A jobbing gardener was employed to cut down some trees at a daily wage of 3s. 6d. Subsequently he was employed to cut down other trees, and in the interval he was engaged in relaying a lawn. After being employed for about five weeks, during which he worked every weekday except when the weather was too bad, he met with an accident while lopping branches from a tree:—

*Held*, that his employment was "of a casual nature," that he was not a "workman" within the meaning of s. 13 of the Workmen's Compensation Act, 1906, and consequently that the employer was not liable to pay compensation under the Act. *KNIGHT v. BUCKNILL*

C. A. [1913] W. C. & Ins. Rep. 175; 6 B. W. C. C. 160; 57 S. J. 245

*Employment to clean windows—Evidence—Workmen's Compensation Act*, 1906 (6 *Educ.* 7, c. 58), s. 13.

**WORKMEN'S COMPENSATION (Workman)—continued.**

A workman was employed to clean windows, and although no further arrangement was entered into at any time, he continued in fact to come and clean them about once a month:—

*Held*, that there was evidence to justify a finding of the county court judge that the employment was "of a casual nature" within the meaning of s. 13 of the Workmen's Compensation Act, 1906. *RITCHINGS v. BRYANT*

C. A. [1913] W. C. & Ins. Rep. 171; 6 B. W. C. C. 183

*Weighers and meters—Compensation—Port and harbour authority—Licensed meters and weighers—Compulsory employment by shipowner—Workman—Contract of service—Workmen's Compensation Act*, 1906 (6 *Educ.* 7, c. 58), s. 1—*Finding of fact by county court judge—Review—Function of Court of Appeal.*

A workman was injured while weighing cargo on the defts.' steamship and claimed compensation under the Workmen's Compensation Act, 1906. He was an assistant meter and weigher appointed and licensed by the King's Lynn Conservancy Board under statutory authority and subject to certain internal rules and regulations of the Board providing (inter alia) that the employment of the meters and weighers should be in rotation according to a secret rota; that payment for their services according to a prescribed scale should be made by the shipowner to the headman appointed by the Board and be distributed by him, subject to certain deductions, amongst the meters and weighers, who were forbidden to receive any direct payment from the shipowner; and that the meters and weighers should act on all occasions under the direction and control of the Port and Harbour Committee of the Board, the committee having power to suspend and the Board having power to dismiss any meter and weigher for offences or irregularity. The employment of meters and weighers was compulsory in the case of shipowners desiring cargo to be weighed or measured within the limits of the port.

It appeared that while at work the applicant was subject to the control and direction of the ship's foreman, who, if dissatisfied with the meters and weighers supplied, could stop the work and send to the headman for others. The county court judge found that the applicant was in the employ of the defts. and awarded compensation:—

*Held*, that there was sufficient evidence to support the finding and that the award must stand.

The function of the C. A. in dealing with findings of fact by the county court judge acting as arbitrator under the Workmen's Compensation Act, 1906, discussed. *WILMERSON v. LYNN AND HAMBURG STEAMSHIP CO., LD.*

C. A. [1913] 3 K. B. 931; 82 L. J. (K.B.) 1064; 6 B. W. C. C. 542; 109 L. T. 53; 29 T. L. R. 652; 57 S. J. 700

**Co-adventurer.**

*Payment of Share of profits—Freight fixed by*

**WORKMEN'S COMPENSATION (Workman)—continued.**

*Owner—Destination controlled by owner—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

The applicant was employed as the master of a barge on the terms that he was to receive half the net freights and to engage and pay the mate and boy, the owner only paying 5s. a week towards the boy's wages. It was a term of his employment that the owner was to fix the freight, and as regards the only voyage made by the applicant, the freight had actually been arranged before he was engaged. The applicant had no choice where to go, but received orders as to his destination and places of call. The applicant said he was not liable to dismissal during a voyage. In an account sent by the owner to the applicant, a deduction was made from the amount shewn as due to the applicant in respect of his insurance under the National Insurance Act, 1911:—

*Held*, that the county court judge had not been justified in holding that the applicant was a co-adventurer and not a "workman" within s. 13 of the Workmen's Compensation Act, 1906, and that the case must be remitted to him to assess the compensation. *SMITH v. HORLOCK* - C. A. [1913] W. C. & Ins. Rep. 441; 6 B. W. C. C. 638; 109 L. T. 196

*Independent Contractor.*

*Contract of service—Evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

A workman having been killed while working in a quarry, his widow claimed compensation from the co. owning the quarry. It appeared that the deceased was paid by the co. a fixed sum on each ton of stone sent out. He had taken another man into partnership and they had under them several men who were employed by the day. The co. provided the necessary tools, trams, and rails, and also a horse. The deceased had to feed the horse and to buy gunpowder from the co. for blasting purposes. When the co.'s manager required a particular kind of stone, he gave orders for it, and he could order the refuse or debris to be removed to any particular place. The manager said that if the deceased had failed to do as instructed, he would have received reasonable notice to terminate the contract. Subject to this the deceased could work as he pleased provided he did not damage the quarry:—

*Held*, that there was evidence to support the finding of the county court judge that the deceased was a "workman" within the meaning of s. 13 of the Workmen's Compensation Act, 1906.

*Per Kennedy L.J.*: The explanation given by Mathew L.J. in *Vamplew v. Parkgate Iron and Steel Co.* [1905] 1 K. B. 851, at p. 853, of the ground of the decision in *Evans v. Penwyllt Dinas Silica Brick Co.*, 18 T. L. R. 58, is incorrect. *JONES v. PENWYLLT DINAS SILICA BRICK CO.* - C. A. [1913] W. C. & Ins. Rep. 394; 6 B. W. C. C. 492

*Contract of service—House provided by employers rent free in consideration of services to*

**WORKMEN'S COMPENSATION (Workman)—continued.**

*be rendered—Leakage from flue—Death by suffocation—Accident "arising out of and in the course of" employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1; s. 13.*

A workman was employed by a co. as a steel tester, his hours being from 6 A.M. to 5.30 P.M. He was allowed by the co. to occupy a house adjoining their office, rent and rate free, on the terms that he was responsible for seeing the offices kept washed. On the night of Mar. 14, 1912, he was suffocated in his sleep owing to an escape into his bedroom of poisonous fumes from a defective flue. In an action by a dependant of the deceased workman to recover compensation:—

*Held*, by the C. A., (Kennedy L.J. dissenting), that the deceased did not occupy the house as an extension of his contract of service as a steel tester, and that as the terms on which he lived there did not themselves constitute a contract of service, he was not a "workman" within the meaning of the Workmen's Compensation Act, 1906, s. 13, with reference to his occupancy of the house.

*Held*, further, that the deceased was not obliged to sleep in the house, and therefore that in any case the accident had not arisen out of and in the course of his employment. *WRAY v. TAYLOR BROTHERS & CO.*

C. A. [1913] W. C. & Ins. Rep. 446; 6 B. W. C. C. 530; 109 L. T. 126

*Contract of service—Owner and master of ship—Crew engaged and paid by master—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

The owners of a small coasting schooner, by written agreement, gave command thereof to K. on the following conditions: K. was to work the vessel on the best paying trade for the benefit of all concerned, receiving for his services two-thirds of all freights carried, of which he was to pay all crews' wages, victuals of crew, port charges, towages, and all other expenses connected with working the vessel; the remaining one-third K. thereby agreed to remit to the owners as "owners' share." If K. had cause to give up command, and so advised the owner, and if requested, K. was to bring the vessel to A. free of charge. While K. was working the vessel under this agreement, one of the crew whom he had engaged met with an accident, for which he claimed compensation against the owners under the Workmen's Compensation Act, 1906:—

*Held*, that, on the true construction of the agreement, K. was acting merely as agent for the owners in hiring the crew, and that the relation of master and servant, within the meaning of the Act, existed between the applicant and the owners. *KELLY v. "MISS EVANS" (OWNERS OF SHIP)* - C. A. (Ir.) [1913] 2 I. R. 585; [1913] W. C. & Ins. Rep. 418

*Contract of service—Question of fact—Control—Work done by gang—Payment of lump sum to gang—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

**WORKMEN'S COMPENSATION (Workman)—**  
*continued.*

The respondent, a landowner, engaged the appellant to fell trees. The work was to be done by the appellant with men under him. The respondent engaged the men, altered the number of men engaged, found the principal tools, and had the right to dismiss men; but the engagement of a bad workman could be objected to by the other men. The respondent had no control as to how the work should be done. He paid a lump sum for the work on completion, allowing a weekly draw on account, the men settling among themselves how the money was to be divided. Refusal to do the work was to continue by the respondent and had been breach of contract. The appellant, having had a leg broken by a tree falling on it, claimed compensation:—

*Held*, that the appellant was an independent contractor and not employed under a contract of service within s. 13 of the Workmen's Compensation Act, 1906, and could not therefore recover compensation. **CURTIS v. PLUMPTRE** - C. A. [1913] W. C. & Ins. Rep. 195; 6 B. W. C. C. 87

*Contract of service—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 8, sub-s. 1 (iii.) (c) (iii.): s. 13.*

A workman, who was a painter, died of blood poisoning, and his dependants recovered compensation from his last employer under s. 8, sub-s. 1 (iii.) (c) of the Workmen's Compensation Act, 1906. That employer sought to obtain contribution under s. 8, sub-s. 1 (iii.) (c) (iii.), from N., who had employed the workman during the preceding twelve months in the following circumstances: Prior to Nov., 1911, the workman was in partnership as a motor repairer, but on Nov. 11, 1911, he and his partner assigned all their property for the benefit of their creditors. N. was the trustee of the deed of assignment, and was given power to employ the workman "to assist him in winding up the affairs of the debtors." N. in fact employed him for this purpose for thirteen weeks. N. said that he had exercised no control over the workman, who was allowed to do what he thought proper towards winding up the business. N. also said that he was under no obligation to give the workman notice, if he had desired to terminate the employment, but that he should probably have thought it right to do so. He did not employ him as a painter, although apparently he had done some two days' painting during the employment:—

*Held*, that the county court judge was justified in finding that the relation between N. and the workman had not been that of employer and workman within the meaning of the Workmen's Compensation Act, 1906. **PEARS v. GIBBONS**; **NELSON, THIRD PARTY**

C. A. [1913] W. C. & Ins. Rep. 469; 6 B. W. C. C. 722

*Employment by builder on piecework—Evidence of control—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

The applicant carried on business, as a

**WORKMEN'S COMPENSATION (Workman)—**  
*continued.*

painter and paperhanger for many years, and, besides doing work on his own account, he also worked for the respondent and other persons in the building trade. On Oct. 12, 1912, he was working for the respondent when a plank broke and he fell and was injured. There was evidence that the respondent employed the applicant on piecework on the terms that the applicant supplied his own paste box, pail, and brush, and that the respondent provided other things such as steps, planks, and paper. The respondent used to tell the applicant what house to work on, and there was some evidence that he sometimes directed which room or part of a room was to be done, or generally how the work was to be done. The applicant was paid on sending in his account, and for this purpose the applicant used bills for which a billhead containing the words "Dr. to J. S. Lewis, Decorator, &c." had been cut off. It was suggested that the respondent had referred to the applicant as one of his men:—

*Held*, that there was evidence from which the county court judge might reasonably infer that the applicant was not working at the time of the accident as an independent contractor, but as a "workman" within the meaning of s. 13 of the Workmen's Compensation Act, 1906. **LEWIS v. STANBRIDGE**

C. A. [1913] W. C. & Ins. Rep. 515; 6 B. W. C. C. 568

*Man supplying his own horse and cart—Engaged to cart milk—Paid so much per gallon—Workman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.*

A man who provided his own horse and cart entered into a contract with an agricultural and dairy society to cart milk to and from their creamery during a certain period, on such days and times as should be fixed by them, and for such service he was to be paid at the rate of one halfpenny per gallon. Having sustained an injury whilst engaged in carting the milk, he applied for compensation under the Workmen's Compensation Act:—

*Held*, that the relationship of master and servant existed, and that the applicant was entitled to compensation. **CLARKE v. BAILIEBOROUGH CO-OPERATIVE AGRICULTURAL AND DAIRY SOCIETY, LD.** C. A. [1913] W. C. & Ins. Rep. 374

*Share of Profits.*

*Fisherman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 7, sub-s. 2.*

A claimant under the Workmen's Compensation Act, 1906, was employed as boat-swain on a steam fishing trawler and was remunerated by wages, maintenance, and poundage dependent on the profits of the fishing expedition:—

*Held* by Earl of Halsbury, Lord Mersey, and Lord Parker of Waddington (Lord Loreburn and Lord Atkinson dissenting), that he was remunerated by a share in the profits within the meaning of s. 7, sub-s. 2, of the Act,

**WORKMEN'S COMPENSATION (Workman)—**  
*continued.*

and was therefore excluded from the Act and not entitled to compensation.

Decision of the C. A. affirmed. **COSTELLO v. OWNERS OF SHIP "PIGEON"** (also reported as **COSTELLO v. KESSELL BROTHERS AND BEECHING**) **H. L. (E.)** [1913] **A. C. 407**; **82 L. J. (K. B.) 873**; [1913] **W. C. & Ins. Rep. 410**; **6 B. W. C. C. 480**; **108 L. T. 929**; [1913] **W. N. 487**; **29 T. L. R. 595**; **57 S. J. 609**

**Volunteer.**

*Volunteer—Gratuitous work—Brother helping brother—No contribution to joint family fund—Workmen's Compensation Act, 1906, s. 13.*

The applicant was a liftman and caretaker under the respondents. The deceased was his brother, who was forbidden to clean and oil the lift, and he was killed by the lift, which suddenly started up to the roof when, to help the applicant, he was cleaning and oiling it. The deceased man contributed nothing to the support of the applicant:—

*Held*, there was no contract of service and no evidence of dependency. **DOUGAL v. WESTBROOK** **C. A. 6 B. W. C. C. 705**

**WORKMEN'S COMPENSATION RULES, 1907**  
**rr. 19, 24.**

*See* **WORKMEN'S COMPENSATION.**

**WORTHING GAS ACT, 1907.**

*See* **HIGHWAY.**

**"WRECK"—Ship—Seaman—Wages.**

*See* **SHIPPING.**

**WRIT—Amendment.**

*See* **AMENDMENT AND PARLIAMENT.**

*Estoppel—Action to recover money lent—Writ issued before two instalments due—Objection not taken on application for judgment under Order XIV.*

The plts. sued the deft. to recover the

**WRIT—continued.**

amount of three promissory notes signed by him, amounting in all to 960*l.* By mistake, the writ was issued before the second and third notes were due. A summons for judgment under Order XIV. was taken out, on the hearing of which the deft. was represented by a solicitor who did not raise the defect in the writ in the defence. The Master gave judgment for the plts. for 600*l.* and gave leave to defend as to the balance. At the trial of the action:—

*Held*, that as the deft. had not set up the premature issue of the writ as a defence, on the hearing of the summons under Order XIV. the judgment then obtained cured the defect in the writ. **STIRLING & Co. v. BUCKNILL**

**Bucknill J. 29 T. L. R. 216**

— **Service.**

*See* **SERVICE.**

*Writ specially indorsed—Action for recovery of land—Landlord and tenant—R. S. C., Order III., r. 6 (F).*

Trial of action as a short cause under R. S. C., Order XIV., r. 12, before Bucknill J.

The action was brought to recover possession of a shop at Teddington.

The shop had been let to the deft. by William George Collier, since deceased, for three years from Dec. 25, 1908, and then from year to year.

William George Collier died on May 8, 1911. The plts. were the executors under his will. They duly gave the deft. notice to quit, expiring on Dec. 25, 1912. The writ was specially indorsed under R. S. C., Order III., r. 6 (F). The deft. was not represented at the trial and did not appear. He had paid no rent to the plts.

Bucknill J. held that the decision in *Casey v. Hellyer* (1886) 17 Q. B. D. 97, did not apply to the present case, and gave judgment for the plts. **HOPKINS AND OTHERS v. COLLIER - Bucknill J. [1913] W. N. 94; 29 T. L. R. 367**

**WRIT OF ASSISTANCE.**

*See* **TRUSTEE.**